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THE AFRICAN CAPTIVES.

TRIAL

OF

THE PRISONERS OF THE AMISTAD

ON THE

WRIT OF HABEAS CORPUS,

BEFORE THE CIRCUIT COURT OF THE UNITED STATES, FOR THE DISTRICT OF CONNECTICUT, AT HARTFORD;

JUDGES THOMPSON AND JUDSON.

SEPTEMBER TERM, 1839.

NEW YORK:
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INTRODUCTORY NARRATIVE.

EARLY in the month of August, 1839, there appeared in the newspapers a shocking story, that a schooner, going coastwise from Havana to Neuvitas, in the island of Cuba, early in July, with about twenty white passengers, and a large number of slaves, had been seized by the slaves in the night time, and the passengers and crew all murdered, except two who made their escape to land in an open boat. About the 20th of the same month, a strange craft was seen repeatedly on our coast, which was believed to be the captured Spanish coaster, in the possession of the negroes. She was spoken by several pilot-boats and other vessels, and partially supplied with water, of which she was very much in want. It was also said that the blacks appeared to have a great deal of money. The custom-house department and the officers of the navy were instantly roused to go in pursuit of the "pirates," as the unknown possessors of the schooner were spontaneously called. The U. S. steamer Fulton, and several revenue cutters were despatched, and notice given to the collectors at the various seaports. On the —— of August, the "mysterious schooner" was near the shore at Culloden Point, on the east end of Long Island, where a part of the crew came on shore for water and fresh provisions, for which they paid with undiscriminating profuseness. Here they were met by Captain Green, and another gentleman, who state that they had in their possession a large box filled with gold. Shortly after, on the 26th, the vessel was espied by Captain Gedney, U. S. N., in command of the brig Washington, employed on the coast survey, who despatched an officer to board her. The officer found a large number of negroes, and two Spaniards, Pedro Montez and Joze Ruiz, one of whom immediately announced himself as the owner of the negroes, and claimed his protection. The schooner was thereupon taken possession of by Captain Gedney, and carried into the port of New London. The Judge of the U. S. District Court and the U. S. Marshal for the district of Connecticut, were sent for by express, and a hurried examination was held on board the Washington, at which the two Spaniards and the cabin boy, Antonio, a creole negro, were examined on oath as to the facts in the case.

The schooner proved to be the "Amistad," Captain Ramon Ferrer, from Havana, bound to Principe, about one hundred leagues distant, with 54 negroes held as slaves, and *two* passengers, instead of twenty. The Spaniards said that, after being out four days, the negroes rose in the night, and killed the captain and a mulatto cook, that the helmsman and another sailor took to the boat and went on shore, that the only two whites remaining were the said passengers, Montez and Ruiz, who were confined below until morning, that Montez, the elder, who had been a sea captain, was required to steer the ship for Africa, that he steered eastwardly in the day time, because the negroes could tell his course by the sun, but put the vessel about in the night. They boxed about some days in the Bahama channel, and were several times near the islands, but the negroes would not allow her to enter any port. Once they were near Long Island, but then put out to sea again, the Spaniards all the while hoping they might fall in with some ship of war that would rescue them from their awkward situation. One of the Spaniards testified that, when the rising took place, he was awoke by the noise, and that he heard the captain order the cabin boy to get some bread and throw to the negroes, in hope to pacify them. No person appeared on behalf of the Africans, nor was any communication held with them by the Judge, but after this examination, the adults remaining, thirty-eight in number, were committed for trial, for murder on the high seas, at the Circuit Court, which was to be held at Hartford, on the 17th of September. The cabin boy, Antonio, and four little children, were committed as witnesses. The whole were then transferred to the jail at New Haven.

Much interest was excited in the public mind

in regard to so unusual an occurrence. It was seen at once that somebody ought to act for these strangers, in order to secure the proper means for the protection of their legal rights. Accordingly, at a meeting of a few friends of freedom, in the city of New York, Messrs. Simeon S. Jocelyn, Joshua Leavitt and Lewis Tappan, were appointed a committee, to receive donations, employ counsel, and act in other respects as circumstances might require, for the protection and relief of the African Captives. This committee immediately announced their appointments and solicited funds. They also engaged the services of able and faithful counsel, Seth P. Staples and Theodore Sedgwick, Jr., Esqs., of New York, and Roger S. Baldwin, Esq., of New Haven. The next thing was, to open a communication with the Africans, through an interpreter; and after repeated trials and much inquiry, they found a man in this city, named John Ferry, a native African, of the Kissi tribe, who was able to converse freely with one or two of them, and imperfectly with others.

With these preparations, the trial came on at Hartford, the proceedings and results of which are given in the following pages. After the trial, and the return of the Africans to New Haven, Professor Gibbs, of Yale College, who had taken much interest in their condition, and who was also much engaged in linguistic pursuits, came to N. York, and visited the British armed brig Buzzard, Capt. Fitzgerald, now lying in our waters in company with a number of vessels seized by her on the coast of Africa for being engaged in the slave trade. Here, by means of the numerals used by the captives, he succeeded in finding, among the Africans employed on board the brig, two men, named Charles Pratt and John Covey, who he thought used the same language. In compliance with a request of the committee, Captain Fitzgerald very obligingly allowed these men to be taken to New Haven. To the unspeakable joy of the poor prisoners, as well as the great satisfaction of the committee and all the friends of humanity, the hopes of Professor Gibbs were fully realised, as the men were found to speak exactly the same language with that of the Africans in jail. Professor Gibbs, in a letter communicating this intelligence, says: "It would have done your heart good to witness the joy of the Africans on finding themselves able to converse with the men." And another gentleman writes: "We called with them (the interpreter) at the prison this morning, just as the African captives were at breakfast. The Marshal objected to the entrance of the interpreters until the breakfast was over, but one of the captives coming to the door and finding a fellow-countryman who could talk in their own language, took hold of him, and literally dragged him in. Such a scene ensued as you may better conceive than I describe. Breakfast was forgotten; all crowded round the two men, and all talking as fast as possible. The children hugged one another with transport." The captives confirm all that had been previously learned from John Ferry. The means of communication were now as good as could be desired, as the interpreters were intelligent, and one of them, Covey, able both to speak and write English very well, having been brought up at Sierra Leone.

On request of the committee at New York, the Rev. Leonard Bacon and Henry G. Ludlow, and Mr. Amos Townsend, Jr., of New Haven, consented to act as a committee to take measures for giving intellectual and religious instruction to these benighted pagans, during such time as they might remain accessible to the efforts of Christian benevolence. This committee were fortunate in engaging the services of Mr. George E. Day, a gentleman of liberal education, who has been a professor in the New York Institution for the Deaf and Dumb, and is familiar with the language of signs, and the other peculiar methods of conveying instruction employed in these institutions. An excellent matron is also engaged to teach the four little children.

The first attention of all parties, on finding complete access to the captives, through their countrymen, was of course directed to the obtaining of a full and separate statement of the facts connected with their present situation, and putting them into a form to be available for any legal purposes that might be required.* These affidavits satisfied the learned counsel employed, that great abuses had been endured by the Africans, at the hands of Messrs. Ruiz and Montez. The following condensed statement of some of them, was prepared by Mr. Day, and published in one of our journals.

NARRATIVE OF THE AFRICANS.

To the Editors of the Journal of Commerce.

New Haven, Oct. 8, 1839.

Gentlemen—The following short and plain narrative of one or two of the African captives, in whose history and prospects such anxious interest is felt, has been taken at the earliest opportunity possible, consistently with more important examinations. It may be stated in general terms, as the result of the investigations thus far made, that the Africans all testify that they left Africa about six months since; were landed under cover of the night at a small village or hamlet near Havana, and after ten or twelve days were taken through Havana by night, by the man who had bought them, named *Pipi*, who has since been

* It appears that they are most of them from the Mandi or Mandy country, and not from Manding, as was supposed. Prof. Gibbs had already satisfied himself that their language was not that of the Mandingoes—and thus a mystery was thrown over the matter which is now explained. One of the new interpreters is a native Mandi, and was rescued from a Spanish slave-ship about seven years since. The other was brought up at Sierra Leone.

satisfactorily proved to be Ruiz; were cruelly treated on the passage, being beaten and flogged, and in some instances having vinegar and gunpowder rubbed into their wounds; and that they suffered intensely from hunger and thirst. The perfect coincidence in the testimony of the prisoners, examined as they have been separately, is felt by all who are acquainted with the minutiæ of the examination, to carry with it overwhelming evidence of the truth of their story.

Your's, respectfully,
GEORGE E. DAY.

MONDAY, Oct. 7.

This afternoon, almost the first time in which the two interpreters, Covey and Pratt, have not been engaged with special reference to the trial to take place in November, one of the captives named Grabaung was requested to give a narrative of himself since leaving Africa, for publication in the papers. The interpreters, who are considerably exhausted by the examinations which have already taken place, only gave the substance of what he said, without going into details, and it was not thought advisable to press the matter. Grabaung first gave an account of the passage from Africa to Havana. On board the vessel there was a large number of men, but the women and children were far the most numerous. They were fastened together in couples by the wrists and legs, and kept in that situation day and night. Here Grabaung and another of the Africans named Kimbo, lay down upon the floor to show the painful position in which they were obliged to sleep. By day it was no better. The space between decks was so small—according to their account not exceeding four feet—that they were obliged, if they attempted to stand, to keep a crouching posture. The decks, fore and aft, were crowded to overflowing. They suffered (Grabaung said) terribly. They had rice enough to eat, but had very little to drink. If they left any of the rice that was given to them uneaten, either from sickness or any other cause, they were whipped. It was a common thing for them to be forced to eat so much as to vomit. Many of the men, women, and children, died on the passage.

They were landed by night at a small village near Havana. Soon several white men came to buy them, and among them was the one claiming to be their master, whom they call *Pipi*, said to be a Spanish nick name for *Jose*. Pipi, or Ruiz, selected such as he liked, and made them stand in a row. He then felt of each of them in every part of the body; made them open their mouths to see if their teeth were sound, and carried the examination to a degree of minuteness of which only a slave dealer would be guilty.

When they were separated from their companions who had come with them from Africa, there was weeping among the women and children, but Grabaung did not weep, "because he is a man." Kimbo, who sat by, said that he also shed no tears—but he thought of his home in Africa, and of friends left there whom he should never see again.

The men bought by Ruiz were taken on foot through Havana in the night, and put on board a vessel. During the night they were kept in irons, placed about the hands, feet, and neck. They were treated during the day in a somewhat milder manner, though all the irons were never taken off at once. Their allowance of food was very scant, and of water still more so. They were very hungry, and suffered much in the hot days and nights from thirst. In addition to this there was much whipping, and the cook told them that when they reached land they would all be eaten. This "made their hearts burn." To avoid being eaten, and to escape the bad treatment they experienced, they rose upon the crew with the design of returning to Africa.

Such is the substance of Grabaung's story, confirmed by Kimbo, who was present most of the time. He says he likes the people of this country, because, to use his own expression, "they are good people—they believe in God, and there is no slavery here."

The story of Grabaung was then read and interpreted to Cinquez, while a number of the other Africans were standing about, and confirmed by all of them in every particular. When the part relating to the crowded state of the vessel from Africa to Havana was read, Cinquez added, that there was scarcely room enough to sit or lie down. Another showed the marks of the irons on his wrists, which must at the time have been terribly lacerated. On their separation at Havana, Cinquez remarked that almost all of them were in tears, and himself among the rest, "because they had come from the same country, and were now to be parted forever." To the question, how it was possible for the Africans, when chained in the manner he described, to rise upon the crew, he replied that the chain which connected the iron collars about their necks, was fastened at the end by a padlock, and that this was first broken and afterwards the other irons. Their object, he said, in the affray was to make themselves free. He then requested it to be added to the above, that "if he tells a lie, God sees him by day and by night."

The captives are not now held in custody as prisoners, but are in the keeping of the U. S. Marshal as "merchandise" or chattels, under the claim of the Spaniards, Capt. Gedney, and others. They are provided with comfortable quarters at the County house, in New Haven, and are taken out every pleasant day, for a while, upon the green—to exercise their limbs—when Jingua, especially, performs astonishing feats of agility. There is something very prepossessing and pleasant in his countenance, and his authority over the others is absolute, but exercised with justice and mildness.

The following brief statement of the case, as it now stands, may help some of our readers to a clearer understanding of the matter. The Africans were at first committed for trial on a charge of murder, but that process is at an end, because the Circuit Court has decided that it has no legal cognizance of the transaction on board a Spanish vessel. Next, Capt. Gedney, of the U. S. Navy, has filed a libel on the vessel and cargo, *including the prisoners*, claiming salvage for "meritorious services" performed; Montez has filed a claim for the four children as his property; and the district attorney has

filed a mixed claim and libel, first on behalf of the U. S. at the instance of the Spanish minister, for the restoration of the Africans to the Spaniards, and secondly, in behalf of the U. S. claiming that they are free persons, wrongfully brought into this country, and ought to be returned to their native land. These libels and claims will be tried at the adjourned District Court, on the third Tuesday in November, at Hartford.

If it shall be found that the seizure by Capt. Gedney was made within one mile of the shore, and consequently within the District of New York, then the District Court in Connecticut will have no jurisdiction, and a question arises whether the vessel, cargo and prisoners can be transferred to this district.

If the libels for salvage are sustained by the District Court, and the *dead* property is insufficient to pay the amount decreed, (as it probably will be, the presumption being that the value of the vessel and cargo will be nearly or quite absorbed in expenses,) a curious question will arise—how are the salvors to be paid? Judge Judson has already decided that the *live* "property" cannot be sold in his district. If, however, the Africans are property, consistency, if not humanity, requires, it would seem, that they be sold to pay the salvors; and if they are not property, and cannot be sold, then they are free. If dissatisfaction is felt at the decision the district judge may make, an appeal can be taken to the Circuit Court, which sits next March; and if the decision of this court is not satisfactory, an appeal can be taken to the Supreme Court of the U. S. which will sit in Jan., 1841. The friends of the prisoners, therefore, need entertain no apprehension that they will be out of the custody of the law for eighteen months at least, from the present time. If the Court in the last resort decide in favor of the prisoners, they are free, of course; but if they decide otherwise, our government can then deliver up the prisoners to the Spaniards under our treaty with Spain. But although they *can* do this, it is not to be presumed they will, for they may say to the Spanish government, this is wholly a question of *property* on your part, and we prefer to pay the estimated value of the slaves rather than outrage the feelings of the people of this country by surrendering them.

If, however, the libels should be abandoned, and all proceedings be discontinued, another difficult question will arise—can the government of the United States, under such circumstances, take hold of these Africans for the purpose of delivering them up to the Spaniards? We think not, for it is expressly provided in the treaty that ships and merchandise are to be restored as soon as due and sufficient proof shall be made concerning the property, and this must be determined by the tribunals of justice. If then, no judicial adjudication should take place, the executive cannot, it would seem, restore these Africans to the Spaniards.

New York, Oct. 15, 1339.

N. B. This pamphlet will be followed by another, containing a full Report of the Trial at the next term.

CASE OF THE AFRICANS.

CIRCUIT COURT OF THE UNITED STATES: DISTRICT OF CONNECTICUT.

HON. SMITH THOMPSON, CIRCUIT JUDGE.
HON. ANDREW T. JUDSON, DISTRICT JUDGE.

Wednesday, September 18, 1839.

SETH P. STAPLES, Esq. on the affidavit of Theodore Sedgwick, Jr. Esq. moved for a writ of HABEAS CORPUS, directing the Marshal to bring before the Court three African girls, named *Teme*, alias *Juanna*, *Ka-gue*, alias *Josepha*, *Margui*, alias *Francisca*, now confined in the jail, in the city of Hartford, and to show cause, if any there be, why they should not be released.

WILLIAM HUNGERFORD, Esq. said that these individuals were persons claimed by two Spanish gentlemen, as their slaves; and that one of them was confined to his room, and would not be able to attend, so soon as it was proposed to have the writ returnable. He would also suggest, in addition, that there was a libel pending before the District Court, on these persons as part of the cargo of the Amistad, in behalf of Lieutenant Gedney, for salvage.

JUDGE THOMPSON. I would suggest that all these matters will come up on the *habeas corpus*. The affidavit states that these persons are imprisoned without any cause. If any reason is shown why they should not be discharged, the Court will not discharge them. If the Marshal makes the return that they are here for any legal purpose, they will be detained, if not they will be discharged. If the gentleman who claims them as his property is unable to appear in court, he will doubtless acquaint his counsel with the matter.

Writ granted—returnable to morrow morning.

Thursday Afternoon, September 19.

The Court room was crowded with spectators, whose countenances evinced a deep interest in the expected proceedings. The Marshal brought into Court three interesting little African girls, in obedience to the writ of *habeas corpus*. They were evidently in great fear, all of them weeping, and clasping with a determined grasp, the hands of the jailor, who came into Court with them. He endeavored to pacify them, with the offer of some fruit; but they refused it.

RALPH I. INGERSOLL, Esq. read the Marshal's return, as follows: 1. The writ of habeas corpus; 2. A warrant in behalf of the United States, against certain persons therein named, for murder and piracy, alleged to have been committed on board the schooner Amistad; on which these girls were ordered to recognise for their appearance as witnesses, in default of which they were committed; 3. The libel of Lieutenant Gedney, for salvage, in which these girls were seized as *part of the cargo* of the Amistad, as appears by the return of the Marshal on the warrant issued by the District Court; 4. The libel of Don Pedro Montez, a *Spanish gentleman*, claiming these girls as his slaves, valued at $1300—stating that these slaves were legally purchased in the Island of

Cuba, where slavery is allowed; and claiming that, according to the treaties existing between the United States and Spain, they ought to be delivered up to him, without any loss; 5. A libel of the District Attorney of the United States, stating that the proper representative of the Queen of Spain had demanded of the proper department the restoration of these persons, as the property of Spanish subjects; and, as the Attorney on behalf of the United States, asking the Court, to try the issue on the claim of the Spanish minister, and if it should appear that they should be given up, to make an order accordingly; but, if it should appear that they had been illegally imported into the United States, asking the Court to make an order to enable the President to send them back to Africa, in accordance with the provisions of the law relative to the disposition of recaptured Africans, which provides that Africans taken on board of American vessels, engaged in the slave trade, may be sent back to their native land by the direction of the President.

Mr. Staples said, the Counsel for the prisoners would require some time to consider the subject, in order to answer the Marshal's return, which request was granted by the Court.

Friday Morning, September 20.

Theodore Sedgwick, Jr. Esq. said, the three African girls, brought up on the writ of *habeas corpus*, answer and reply to the Marshal's return, by their proper guardian appointed by the Court, That they are not now and never were slaves, or the property of Don Pedro Montez, but native Africans, born at some place in the district of Senegambia, in Africa; that, on the 20th of April last past, they were seized by the said Don Pedro Montez, or his agents, or some other person or persons, and illegally put on board a Portuguese or Spanish vessel, and carried to the Island of Cuba, in the dominions of the Queen of Spain, contrary to the laws of nations and the laws of nature, and contrary to the laws of Spain; That when they arrived on the said Island of Cuba, they were secretly and privately landed and taken to a secret place, where they remained two or three weeks; from whence they were taken in the night, by the said Don Pedro Montez, or his agents, and put on board the Schooner Amistad; and after being at sea for two or three months, they were brought into the port of New-London, where they were seized by the Marshal of the District of Connecticut and imprisoned; That the said importation from Africa was contrary to the laws of Spain, as appears from the decree of the King of Spain, issued in December, 1817, prohibiting the African slave trade; and the further ordinance of the Queen of Spain, issued on the second of November, 1838, directing the measures to be taken to carry into effect said decree of 1817. And, as to the rest of the allegations contained in the Marshal's return, they answer that the same are insufficient in law to warrant their detention in custody of said Marshal.

In testimony of the facts here alleged, Mr. Sedgwick presented the affidavits of Augustus William Hanson and John Ferry; stating that they were native Africans, and that they had seen and conversed with the African girls imprisoned in the jail in Hartford; and that they were native Africans, the eldest about nine years old and the youngest about seven; and that they can speak neither the Spanish nor Portuguese languages.

Mr. Staples said the Marshal had in custody an African, who came in the same vessel with the girls, about 25 years of age; and that Rev. Mr. Gallaudet had been conversing with him, by signs, and was of the opinion that he understood sufficiently the nature of an oath to justify its being administered; and the Court ordered his deposition to be taken.

Ralph I. Ingersoll, Esq. If the Court please, I would make the suggestion whether your honors will go into this inquiry, on the writ of *habeas corpus*, while the merits of the case are pending before another tribunal, the District Court. It appears, by the answer put in yesterday, that these persons are libelled in the District Court as the property of Spanish subjects. They are also libelled on the part of the United States, on the ground that information has been transmitted by the minister of Spain, to the proper department, claiming that they are the property of Spanish subjects, and that, by existing treaties, it is the duty of the American government to restore them to their owners. The libel of the District Attorney also presents another aspect, that, if these

persons had been introduced in violation of our laws, then our District Court should, according to the act of 1819, make such an order as would enable the executive authority of the United States to transfer them to the coast of Africa.

I wish to suggest whether, on writ of habeas corpus, the Court will take cognizance of the matter. There is a cause now pending before another Court, in which these various important and intricate questions are to be settled. Will this honorable Court, on a writ of habeas corpus, take the whole case out of the hands of the District Court, and enable them to bring it here, in this summary manner, instead of taking the case by appeal, if they shall be dissatisfied with the decision of the District Court? Manifest injustice might thus be done. Questions may arise, in the course of these trials, involving the faith of treaties and the rights of individuals, wherein great and manifest injustice might be done, if they are decided in this summary way as it would be impossible to go into all these questions on this summary process.

R. S. Baldwin, Esq. May it please the Court—The gentleman has gone forward and presented a preliminary question, upon which he asks this honorable Court to dismiss the habeas corpus. The grounds on which this writ is brought are, that they are illegally held under the process of a Court of the United States, which had no jurisdiction over them ; and that they are held in custody not as *persons*, but as *property*—as mere chattels, to be kept in custody till other parties, litigating questions in which they have no interest, can come to a conclusion of their case ; which may be one year, or it may be five years ; and yet that gentleman says, because it has pleased these parties to cause these persons to be libelled as property, therefore this matter is not to be inquired into. If the District Court had issued a warrant against these persons as property, the Marshal would have had no right to seize them ; but the warrant of the District Court was only directed against the *cargo* of the vessel ; yet under this warrant, the Marshal has seized these *persons*.

Judge Thompson. There may be one branch of the return, that will steer clear of these specifications—these persons are held under a commitment to appear as witnesses in a criminal case.

R. S. Baldwin. If the Court please, we propose to offer surety for their appearance.

Judge Thompson. That is enough.

Mr. Baldwin proceeded to state the ground on which the Consul for the prisoners claimed that they ought to be discharged. Prior to our application to this honorable Court for their discharge, there was but one process pending in the District Court, and that was the libel of Lieutenant Gedney, upon which a warrant was issued to the Marshal, commanding him to take the schooner Amistad, and her property. Under that warrant, the Marshal took the schooner and her property ; he also went further, not in obedience to the order of the District Judge, and took these individuals.

[Here Mr. Baldwin was interrupted by the Grand Jury coming into Court.]

Foreman. May it please the Court—I am directed to say that the Grand Jury have before them a number of bills of indictment, charging certain persons with murder and piracy ; and request of the Court a charge in relation to the law on that subject.

Judge Thompson. It is utterly impossible for the Court to give the Grand Jury any information, unless there is a statement of the facts before you. If you find a state of facts, and present them to the Court, the Court will be able to charge you on the facts. You have jurisdiction, and the Court have jurisdiction of the offence of piracy, because it is against the law of nations. But, whether the complaint against the parties in this case will justify an indictment for piracy, the Court cannot undertake to say, unless they are furnished with a statement of the facts before you. It would be very useless for the Court to enter into any general charge as to murder or piracy.

Foreman. The object of the Grand Jury was merely to ask a charge as a guide, it having been intimated, by his honor, the District Judge, that such charge would probably be given on the arrival of your honor.

Judge Thompson. The Court cannot charge you in the abstract. The question is, whether you can find a bill, on a given state of facts. I do not mean to intimate

that the Court will give an opinion as to the state of the facts; but merely that they will thus be able to determine whether they have jurisdiction in the case or not. The District Judge probably wished not to give any definite opinion on this case, before I arrived. It was not, however, understood that I should give you any formal charge, as I should have done, if I had been here. If you make a statement of facts, the Court could give a charge as to the jurisdiction of the Court over the matter.

The Grand Jury retired, and afterwards presented a statement of the facts, as follows:

"That a Spanish vessel, built in Cuba, called the Amistad, duly and legally licensed to carry on the coasting trade, sailed from Havana on the 28th June, 1839, commanded by Ramon Ferrer, for the port of Guanaja, in the Island of Cuba, having on board a cargo of sundry articles of merchandise, two Spanish citizens as passengers, with 53 negroes purchased by them as SADINOES (that is—not natives of Cuba) in the city of Havana, with regular permits for the Spaniards, negroes and merchandise. That about four days after sailing, when three or four leagues from the Cuba and forty from Havana, the negroes rose upon and killed the master and one of the crew of the vessel, and took the command and charge of the same, and wounded and injured the two Spanish passengers. That on the 26th of August last, the said schooner Amistad was found in the waters near the east end of Long Island, within one mile of the shore, in possession of the negroes aforesaid, from whom she was captured by the United States brig Washington, and brought into the port of New London, in the District of Connecticut, where the said negroes were apprehended by the Marshal of this District, in whose custody they now are. That while said vessel was so in possession of said negroes, the boxes and trunks of goods were broken open by them, and some of the goods they appropriated to their own use."

Upon this finding, the Grand Jury asked instruction of the Court.

By the Court. Is this the only business you have before you?

The Grand Jury, by their foreman. It is.

By the Court. The Court will examine the finding of the Grand Jury, and instruct them in relation to it, at the coming in of the Court this afternoon.

Mr. Baldwin proceeded,—I was stating, if the Court please, that the return of the Marshal on the process, in the salvage case, shows that, at the time this application was made, the only ground on which he detained these individuals, was, as a part of the cargo of the Amistad, on the process of the District Court, authorising him to seize the vessel and her cargo. After the Court had been applied to on this question of personal liberty, certain persons thought proper to institute a new process, thinking thereby to deprive these interesting, but friendless children of the benefit of this writ of habeas corpus. But it seems to us, all the objections we have stated apply equally to all the proceedings before the District Court; and that this Court, upon the facts here presented, must see that there is no legal ground for the detention of these individuals *as property*, under any warrant whatever.

What is the first process? Lieutenant Gedney, an officer of the United States Navy, files a libel in the District Court, that off Montauk Point, he discovered this schooner Amistad, manned by forty or fifty colored persons, whom he suspects or believes to be owned by certain Spaniards, or *Spanish gentlemen*, as he calls them, who claim these persons as their property. On this information, this Lieutenant Gedney thought proper to take these persons, a large part of whom were not on board the vessel at the time, but on shore, and bring them into the port of New London; and now he presses in this Court, the claim that he had rendered a "meritorious service," not to these poor Africans, by saving their lives, but, by reducing to the condition of slavery, men who, when he found them, were free; and he asks the District Court to award him salvage on these human beings, for the "meritorious service" he has performed, in reducing them to bondage. If the property contained in the cargo of the schooner Amistad was saved by Lieutenant Gedney from any peril, I have no objection that he should have his salvage thereon; but all I ask is, that the District Court of the State of Connecticut will not under-

take to reduce men to slavery whom it finds in a state of freedom, for any purpose whatever.

What are the facts? What are the probable grounds on which the claim of property in these individuals is set up? Here are three children, between the ages of seven and nine years, who are proved to be native Africans, who cannot speak our own language or the Spanish language, or any other but the language of their nativity. They were found in this condition on the coast of a neighboring state, and there claimed by certain persons as slaves. Does not this honorable Court see they cannot be slaves?—They were not born slaves,—they were born in Africa. How came they reduced to a state of slavery? How is it that our Courts are called upon, on the mere suggestion of Lieutenant Gedney, or of these "Spanish gentlemen," to treat them as slaves? Do our own laws tolerate the African slave trade? Have they not for years regarded and treated all engaged in it as pirates—enemies to the human race? Do they not brand them with infamy? And, upon the mere suggestion that these individuals are claimed as the slaves of certain *Spanish gentlemen*, are we to set aside our own laws, and those of every civilized nation, who have long held this trade to be piratical and infamous?

Again, this government not only has declared that this trade is illegal,—felonious,—piratical, but it has bound itself, since 1814, to co-operate with Great Britain for putting an end to this traffic. But, we have not only our own laws, but the ordinance of the King of Spain himself, as early as 1817, two years before our present treaty with Spain, declaring this trade felony, subjecting to imprisonment or banishment his own subjects who should be found engaged in it. What pretence then is there, for the assumption of jurisdiction of these persons *as property*, when, by the laws of the whole civilized world, they cannot be reduced to the condition of property, without the commission of a felony? Upon the proof before the Court, these individuals must have been brought away from Africa very recently. They have no knowledge of any other language than that spoken on the coast of Africa. They must be persons who have been reduced to slavery in violation of the laws and regulations of every nation in the civilized world. If this be so, cannot these individuals speak in this higher Court, and ask this Court to inquire whether they are to be treated as *property*, or as *persons* vested with the rights which God has given them as human beings? Suppose they were Englishmen or Spaniards, seized under a process claiming *salvage* for saving them from the wreck of an Algerine corsair—would any body contend they could be treated as property; and because they were so treated by an officer acting under the authority of an inferior court, the Circuit Court of the United States could not regard their request for an inquiry into the matter? And how shall this Court distinguish between such a case, and that of these Africans, when it is proved that they were brought into this country in violation of the laws of Spain itself, (by whose citizens they are claimed,) and when they cannot be slaves consistently with that law?

These individuals are stated in the libel to be a part of the persons on board the schooner Amistad, a large part of whom the libel says were on shore, within the limits of the State of New-York, when they were taken by Lieut. Gedney. Suppose they were property, could the District Court, could any Court of Admiralty have jurisdiction over that property? Is not the jurisdiction of the Court of Admiralty confined to property which, when the service was rendered, was on the high seas? But the libel of Lieut. Gedney states that they were on shore; and, if they had not been, he would have had much more difficulty in reducing them to slavery, for the benefit of these *Spanish gentlemen*, of whom he claims salvage. But the Admiralty has no jurisdiction on shore; though, if goods have been taken on sea, they may be followed on shore, by the prize court.—(*Kent's Commentaries.*) The same doctrine is maintained in 1st Robinson's Admiralty Reports, p. 238. Where, then, were these persons, at the time of their seizure? Were they on the high seas, or on shore in the State of New-York? Does the libel affirm? Not at all. There the libel is defective. The Court of Admiralty is a court of limited jurisdiction. It cannot interfere with the province of the common law courts; and it is incumbent on the libellant to show, and to set forth in his libel, that the property was taken under such circumstances as to pertain to the jurisdiction of the court.

Again; suppose that Lieut. Gedney was entitled to proceed against these persons as property, what court has jurisdiction of the matter? Where did he find them? He found them in the Southern District of New-York, part of them on shore, and part on board a vessel at anchor. Had he a right to choose his court? Even if he was authorized to libel these persons as property, when the whole service was rendered in the District of New-York, and no part either on the high seas, or after he left New-York,—for the whole merit of his claim is, in restoring these persons to a state of captivity,—if he was authorized to libel them before a Court of Admiralty, where must it be done? Was he at liberty to take them to Louisiana, where individuals are liable to be sold, under the laws of the state, on the presumption that they are slaves? Can he transport them from one place to another? or is he bound to prosecute his claim in the District where the service was rendered?

In the 1st of Paine's Reports, p. 40, the question of the jurisdiction of the Court of Admiralty came before Judge Livingston, in the case of the seizure of the brig Little Ann, for the violation of the embargo laws; the spirit of which applies entirely to the case now pending before the District Court. The whole service claimed to be rendered by Lieut. Gedney, was rendered within the jurisdiction of New-York, so far as there was any jurisdiction in the case. If a party can, for the mere purpose of changing the jurisdiction, go to another state, he is equally at liberty to go where he thinks it may be most for his interest to have his libel tried.

Again, admitting that the District Court of the District of Connecticut had jurisdiction in the case; and that Lieut. Gedney had the right to bring the property, so far as it was property, into the State of Connecticut, is the officer of the Court at liberty to treat these individuals as property, under a general writ from the Court, till they are judicially found as such? Lieut. Gedney says the schooner was manned by upwards of forty negroes, and two Spanish gentlemen, who claimed these negroes as their slaves, etc. Then he claims that these slaves, worth $25,000, were saved. The Spanish gentlemen, he says, begged for and claimed protection; and the vessel was recaptured from the said negroes. Then he says, because he took her with so much difficulty, and but for the surprise upon said blacks, part of whom were on shore, she would have been lost; now, inasmuch as he had saved said cargo and said slaves, who would, in all probability, have been lost to their owners, he prays process against the vessel, and the mandate is, to all persons to show cause why a reasonable salvage shall not be allowed him.

What was the warrant under which these persons were committed? Lieut. Gedney prayed process against the vessel, cargo, and slaves; but did the Court recognise these persons as property? Did the Court take for granted that they did form a part of the cargo, when they commanded the Marshal to take the schooner and the articles of property on board of her? Is there any warrant against these three individuals? Is it enough, when an individual apparently free, comes before the Court, and asks to be discharged from custody, that the Marshal shows a warrant to take a schooner and the articles of property on board? No; before the District Judge could issue his warrant to take these individuals as a part of the cargo of the Amistad, it was incumbent on him to find judicially that they were in the condition of property. Every presumption is, that all beings, who have the form of our nature, are free. No judge would issue a warrant, authorizing them to be seized as property, till he has instituted an inquiry into the facts. What an anomaly! A general warrant issues against the personal property on board a certain vessel; and the Marshal, by a most liberal construction, indeed, of the warrant, takes into custody these human beings; not by any process against them, but on process issued in a case between other parties. Now, we ask this Court to liberate them,—to say that there is at present no ground for treating them as property; and it is incumbent on those who would justify these proceedings, to show to this Court that these persons were in the condition of property. What is the presumption of the law, in the absence of proof? How were these persons, when they were found by Lieut. Gedney? Were they held in the possession of any body? or were they apparently free, and themselves in the command and possession of property? Undoubtedly the latter; for Lieut. Gedney says he found these negroes

in the possession of the vessel. Then, when they were found, the presumption was that they were free; for, the gentlemen will not find, in this state, the law of slavery, that every colored man is presumed to be a slave, until the contrary is shown. Here, thank God, the law presumes that every man is free.

Then, this Court finds upon this return, these persons, who, when first known to the individual who brings them before the District Court, were in a state of freedom —persons, who, by the law of nature are free—who, by the law of our land, could not be legally enslaved. It is incumbent on those who would sustain the jurisdiction of the District Court, in this case, first to prove that these persons were in the condition of property. Until that question is decided, by proof of the fact, the District Court has no jurisdiction of their persons. If they are human beings, and not property, then the District Court is ousted of its jurisdiction. It is certainly competent for this court, when called on by persons held in custody, to make all necessary inquiries to ascertain why they are so held. It won't compel the party so held to wait till the parties litigating bring to issue the question of property. But the parties so held—they who are not parties to the original process, are interested in bringing the question as speedily as possible to issue.

We say, then, in the first place, Lieutenant Gedney has not stated a case which would bring these persons within the jurisdiction of the District Court. We have, by facts, established and shown that no such case could exist. But, if we have failed to establish any thing except that they are human beings, the burden of proof is on the part of those who claim the right to hold them in custody.

But what color of claim to salvage had Lieutenant Gedney, upon these children —for the Court has a right to inquire:— What color of claim has an officer of the United States Navy, for reducing to the condition of slavery men and children, whom he found free in fact? Is this a duty imposed by law on our Naval officers? Are they to come into our Courts, and claim a reward for restoring to the condition of slavery, persons who have been reduced to that condition by foreigners, and escaped from it to a state of freedom? And yet, this is what Lieutenant Gedney asks of this Court—to say that he has performed a "meritorious service," not in saving the lives of these persons, but in saving these slaves to these "Spanish gentlemen." I say it is a claim that our Courts cannot regard. It would be a violation of good faith to our treaty with Great Britain, by which we have obligated ourselves to use our best endeavors to suppress the African slave trade. (Gordon's Appendix, p. 748, Treaty of Ghent, art. X.) That is the obligation imposed by that treaty upon this Government; and is it so, that our Courts are called upon to consider it a meritorious service to aid foreign slave dealers in reducing again to slavery those whom they have kidnapped, but who escaped from their hands? I think it is asking rather too much of a Court in a free State, for Lieutenant Gedney to ask them to declare such an act to be a meritorious service. What had these persons done? They had done what every one of us would have done, if placed in similar circumstances. When in the hands of these men, the spirit within them aspired after liberty; and they sought measures to obtain it. They came into a free country, where slavery is not tolerated; and where they had a right to an asylum. What then? An officer of the United States Navy seizes them, and reduces them again to slavery, and transports them out of the State of New York, where they were when he found them, and brings them into the State of Connecticut, where it is impossible for slaves to be held by law; and now claims a reward for having restored these kidnapped Africans to these Spanish slave dealers, whom he chooses to denominate *gentlemen!* A claim which is not to be tolerated—which should be scouted from a free country. If these Spaniards had got them into the Island of Cuba, we claim not to interfere; but, if they have escaped to this free country, I say there is no power on earth that has a right again to reduce them to slavery.

What has the Court of Admiralty in this State to do with these men? Carry out the principle. Here is the cargo of a vessel in the hands of thirty or forty negroes, claiming to be free. They are brought into the State of Connecticut and libelled as property. What is the Judge to do? Is

he to issue his warrant, directing the Marshal to sell those persons as property? Let us carry out the warrant, and I think it will appear that the District Judge had no idea of including the *persons* as part of the cargo. He directed the schooner Amistad and her property to be taken. Suppose an application had been made for an order to sell the property as *perishable*—for some of these poor unfortunate Africans have died, since they were taken. Suppose these Spanish *gentlemen* had thought proper to claim that, like other property, the persons should be sold—or suppose the libellant himself had applied to have the property sold—has the Judge of Admiralty any power to sell slaves in this State? How is he to award salvage on property which cannot be divided nor sold? It shows that the Judge of Admiralty can do nothing in the case. His honor Judge Judson decided yesterday this very question, of his own motion, after he saw the return of the Marshal. He called upon the counsel of the libellant to be heard, if he wished to maintain that these individuals are to be sold as property. Judge Judson very properly remarked that there was no power in the District Court to sell men, women, and children. If they are property, and the District Court has jurisdiction, it may be followed out by all the incidents of property.

Judge Thompson.—If that be so, they are not taken nor held at all under the process of that Court, for salvage; and it is unnecessary to argue that question.

Judge Judson.—Yesterday, the Court had very little time; but I meant to intimate distinctly that the District Court had no power to sell these persons.

Judge Thompson.—The simple question before this Court is, whether there are any legal questions pending, to justify the Court in holding them. It is a mere question as to the liberties of these persons.

Judge Judson.—Perhaps I should say, that was the annunciation of my opinion—all the process in the District Court is the libel of the United States Government, claiming to hold them on the claim of the Spanish Minister, and of the United States law; and the libel of Don Pedro Montez, claiming the restoration of these persons as his slaves.

Mr. Baldwin.—Now, I claim that, by none of the acts that have taken place since the habeas corpus was issued, can these persons be held in custody under the process of the District Court. Where were these persons when arrested? The first question is out of the way. They were within the limits of the State of Connecticut, a free State, which accords to them the liberty of all other persons. They were bound over to the Circuit Court as witnesses; but that is not a process in which they are subject to further proceedings in the District Court.

Then Don Pedro Montez comes in and files a libel in the Court of Admiralty, claiming that these persons were made his slaves in the Island of Cuba; and calling on the Court of Admiralty to take them from this District, where they are free, and reduce them to the condition of slavery, from which they have escaped. I ask, has the Admiralty Court any such power? Has it power to arrest human beings as property, within the limits of the State of Connecticut, and take upon itself the decision of this great question of property? I deny it. Its jurisdiction is confined to cases on the seas; and when on the land, they are out of the reach of any process by the Court of Admiralty. But, suppose no such objection existed—I ask on what pretence this Don Pedro Montez can come into this court, and asks us to reduce these persons to slavery? Where did he get possession of them? Who brought them to him? He don't inform this honorable Court that the foul traffic in human beings is sanctioned in Cuba. But these persons were brought from Africa. They have not been domiciled in Cuba. But if they had been brought there at any time since 1817, they could not have been reduced to slavery. They must have been brought there, in violation of the laws of Spain and the laws of nature, by an act, which, by the laws of this country, is considered as piracy. And yet this Don Pedro Montez has the hardihood to come into this Court—a man who has been confederating with pirates; for he must at least have purchased these persons of the pirates who kidnapped them. He knew they did not speak the Spanish language—he knew, from their tender age, that they must have been brought to the Island of Cuba in violation of the laws of Spain. He knew all this, and yet he has the hardihood to say he had legally purchased them? But of

whom did he purchase them? Of the pirate—the man who, if he were to receive the punishment he deserves, according to the laws of Spain, would be banished to Mozambique; and there, if he had his deserts, be made a slave of himself. This is the title on which Don Pedro Montez is asking this Court—and he is asking it in pursuance of the treaty with Spain, to deliver up these unfortunate children to be made slaves of for life! What is there in our treaty with Spain on this subject? It will be found in Gordon's Digest, p. 193, sec. 1211. By the eighth article of this treaty, each party become obligated to use all the means in their power to protect the vessels of each other, and to recover and restore to their rightful owners, the property of vessels taken by pirates, &c. That has been holden by the Supreme Court to apply to captures by nations with whom the United States are at war. In case the subjects of either party be forced, through stress of weather, or the pursuit of pirates or enemies in seeking shelter, to retreat into any of the rivers, habors, &c., of the other party, they shall be received and treated with all humanity, &c.; and all their ships and merchandize, of what nature soever, rescued from pirates, which shall be brought into any District, to be restored to their rightful owners; and when any vessel belonging to the subjects of either country, shall be wrecked on the coast of the other, shall receive the same assistance as if they were the inhabitants of the same country.

What is there in these provisions requiring us to deliver up these persons? They are such as we find in all our treaties. There is nothing peculiar in them. Another section gives them the same rights of access to the courts as are possessed by the inhabitants of the same States. But does this sanction the claim which Don Pedro Montez is here making to these persons as his property, to be enforced in our courts? Can he ask one of our courts to take human beings into custody as property, and treat them as such? What is the meaning of the article in the treaty alluded to? Surely, that article must be understood in reference to what is considered and treated as property by the two high contracting parties. Did they undertake to make a treaty after the slave trade was abolished by both the parties, which should recognise the lawfulness of the traffic in human beings? Is it really to be presumed that it was the intention of that article, that property of that description should be given up to whomsoever claimed it to be their own, when we know that no valid title can be acquired to it, either by our own laws or those of Spain?

Apply the same principle to the treaty with Algiers, or any of the Barbary powers; for these treaties contain similar regulations. Suppose that Don Pedro Montez, had been driven on to our coast in an Algerine Corsair, and the Algerine owner had libelled him as an article of property, and asked the Court to return him, because, by the laws of Algiers, Christian white men may be accounted and treated as property. Would any court in Christendom entertain such an application? Are we to construe this treaty according to our own laws; or are we bound to treat it according to the laws of Algiers? (The Algerine, however, has bound himself to England to make no more white slaves.) No; the claim would be scouted in our courts. It is only when men come here with a black skin, that we look upon them in a condition in which they may by any means be made slaves. But, when we find them here from the coast of Africa, the same rule must apply to the black as to the white man.

Don Pedro Montez comes here himself as a man who is encouraging this foul traffic, by purchasing of the slaver. How much better is the man who purchases the stolen property than the man who steals it? But here are stolen men, brought in by pirates, purchased by this man—how much better is he to be regarded in the Court, than if the original slaver had been brought here? Would the Court allow the claim of the man who stole these human beings from Africa, if he should come here and ask the Court to restore these persons to him as his property? I say this man has not more right of property in these men, than the original slaver. His claim is founded on gross injustice; and he himself does not deny that he has abetted the enterprise by purchasing the property. I say then, in regard to his claim, from the place where they were when his libel was filed, and from the very character of his claim, it is utterly impossible it should be allowed in the District Court of this State.

But the Attorney of the United States has thought proper to libel them; and in what character has he done this? He alleges that a demand has been made upon the proper department, by the Spanish minister, claiming these persons as the slaves of certain persons resident in the Island of Cuba; and the Attorney of the United States asks the Court to issue a process for the detention of these persons, that the Court, in conformity with the treaty between the United States and Spain, may make such order as may best enable the United States to comply with their treaty stipulations. But, if it should be made to appear that these persons are natives of Africa, the Attorney claims that this honorable Court will make such further order, as will enable the President of the United States to send them to the coast of Africa.

I ask, What right has the District Attorney of the United States to file a libel in the District Court of the State of Connecticut, and cause to be apprehended as slaves, or to be held subject to further proceedings, these persons, simply because the Spanish minister has thought proper to make the demand for their restoration? Does that treaty impose an obligation on our Government, to be slave catchers for her majesty's subjects? These persons were not under any process prior to the filing of this libel. Who has imposed it upon our officers and courts to assume this office? What law has imposed upon the executive of the United States the obligation to hunt up the runaway slaves of Spanish subjects, and restore them? If Spanish subjects have slaves escape into this country—and on the supposition that the treaty imposes the same obligation upon the Courts, and gives the same rights as our compact gives to the slave-holder of the Southern States,—is it thereby made the duty of the Governors of our free States, upon the demand of the minister of Spain, to issue a warrant and arrest the fugitive slave, and deliver him up? I believe this is a duty never deemed to be imposed by our compact. If these Spaniards have rights in the case, they have a right to prosecute in the Courts having jurisdiction over these persons. Here is Don Pedro Montez, prosecuting his claim, and he shows what his title is; and I believe we have shown that it is no title at all. And what right has our District Attorney, upon the mere suggestion of the Spanish minister, to come to his aid? What right has he to require that our tribunals of justice should bear a part in enslaving these free persons? The obligation of the treaty requires no such thing. If one of the vessels of the United States should capture one of the vessels of Spain, having on board persons held as slaves according to the laws of Spain, and bring it into the United States, then process might be instituted in the District Court, and it would become the duty of the Court, either by claim filed by counsel, or the Court themselves, to institute inquiry. But, if a Spanish slave has escaped from his master—if he has come voluntarily—if he has come as a fugitive—is it the duty of any officer of the United States to pursue him? Has the President of the United States come to this, that, whenever a slave comes from the Island of Cuba, he must forthwith set himself and the officers of the United States to pursue him? No; it is only in cases of capture, that the Courts of the United States are ever called upon to inquire into the validity of claims to property of this description. Look at the case of the Antelope, in the 10th of Wheaton. During the civil war between Spain and South America a vessel was fitted out at Baltimore, as a privateer, in the service of Colombia, for the purpose of cruising against the Spanish Government. She went out in violation of our neutrality; proceeded to the coast of Africa, and there captured an American slaver, under Portuguese colors. The Antelope was found, and brought in by an officer of the United States Navy, and libelled. The United States filed a claim, not in behalf of the Spanish slaver, but as guardian of the negroes. The Spanish and Portuguese consuls filed their claims. The owner of the privateer filed his claim. That claim was dismissed, and the claim of the United States was dismissed, and the slaves ordered to be delivered to the consuls. The United States prosecuted an appeal, which came up to the Supreme Court at Washington. At the time of that capture, neither Spain nor Portugal had prohibited the slave trade. It was, with these nations, a lawful trade. The question came up and was elaborately argued by Mr. Wirt, in behalf of the United States, and by Mr. Berrien, in behalf of the Spanish and Por-

tuguese consuls, whether it was the duty of the United States, having in view our treaty obligations, and the spirit of our own laws, and the decision made by most European nations as to the character of the trade, to give up these men as slaves. A question arose also, as to where the burden of proof lies, to show that the men are slaves, when so claimed. The Supreme Court of the United States were equally divided. The ground on which the claim to restore was argued, was that the slave trade, by the laws of Spain and Portugal, was then lawful—and that this vessel had been captured by a vessel wrongfully fitted out, and in violation of our neutrality. Upon the strength of that, half the members of Court were of opinion that, upon proof of property, the slaves must be delivered up. The other half were of opinion that, the persons having come into the United States not in the actual condition of slaves, they ought not to be delivered up. But the Supreme Court being thus equally divided, the decree of the Court below remained in force and was carried into effect.

There were two principal facts in that case, which can have no influence here—1. The property was wrongfully taken. 2. The trade was lawful by the laws of Spain and Portugal. At the time the capture was made, the negroes were in the actual condition of slaves. The decree of the Court restored them to just the condition in which they were taken. But how is the case here? The laws of Spain forbid the traffic—the laws of Portugal forbid it—the laws of the United States declare it piracy. What, then, is the pretence for the interference of the Spanish Government? Have they any right—can the queen of Spain, consistently with the ordinance read, ask the Courts of the United States to deliver up these persons as slaves who would have been free, by the laws of Spain, if they had come to Havana? Again; this vessel did not come here by any wrong which our Government is bound to repair? They sought an asylum—they came not as slaves, but freemen—as any citizens of that country from which they came would come. You are asked first to make slaves of them, and then to deliver them up. Suppose by the laws of Havana they might be made slaves of—is it by the laws of Havana that we are to judge? If anything is claimed to be delivered up, it is as property? How came these negroes to be slaves or property? Were they born owing allegiance to the Spanish Government? Not at all. They are natives of Africa. How came they so far subject to the Spanish laws as to be judged by them? How is it, when these persons come before our Courts, asserting their liberty, that they are to be judged by Spanish laws? Have these children ever been domiciled in Spain? They were torn from their parents in Africa; forcibly landed in the Island of Cuba, late at night, and cruelly sold to these men. Are they to be judged by Spanish laws, or by our own laws, or the laws of nature? By this law, our own Supreme Court have decided that they are free. What compels your honor, because a Spanish minister has thought proper to introduce his claim, to issue a warrant and seize them in the State of Connecticut? The claim is absurd. This is a case that could never have been anticipated by that treaty; for the slave trade was abolished before that treaty was made. It is preposterous for them to call upon us to aid in conferring property upon these men, who, if they were in Havana, would be subject to the penalty of transportation, and if they were citizens of the United States, to the penalty of death. They deserve the penalty of death for piracy, which would be awarded to any citizen of the United States, who should be found engaged in the same manner.

There is not the slightest pretence for this claim. I do not understand the Spanish minister to claim that any department of our government is bound to deliver them up as fugitives from justice. That has been decided, and no power exists in the President to deliver up a fugitive from justice, except by an express provision of treaty. They are not then to be delivered up either as property or as fugitives.

But the District Attorney has filed another claim, that he wants this Court of Admiralty to hold them, till the Court can ascertain that they are entitled to freedom, and then deliver them to the President of the United States, to be transported to Africa. This is a strange process—imprison them, in order to ascertain that they are free! But what power has the President of the United States over those persons? There is a provision in the law of

the United States that, when any persons shall be brought into the United States *in an American vessel*, as slaves, the President of the United States shall be at liberty to send them to Africa. There is also another law, which says, the President shall be authorised to make such regulations and arrangements for the safe keeping and removal of all such persons as may be so taken, and appoint such agent as may be necessary, on the coast of Africa, to receive them. But these powers are confined to those cases where the slaves are brought in in American vessels ; but that is entirely inappropriate to this case.

There is another law, which declares that, if any slaves are brought into the United States, neither the importer or any other person shall hold any title to them ; but the same shall be subject to any regulations which any of the states or territories may make for the disposing of them.

There is another provision, directing that they may be delivered to the overseers of the poor of any port or place where the vessel may be; and that information shall be immediately transmitted to the governor, &c.

If these persons were really brought into the United States with the intent on the part of anybody to hold them as slaves, then they came in in violation of this Act, and they would have to be delivered to the overseers of the poor, and the persons who brought them in would be liable to be punished.

There is then, no cause whatever for the interference of the District Attorney. Even if they were slaves, there is no law authorizing the District Court to issue a warrant for their seizure. They cannot be held as property, for they are not slaves ; and for the United States to interfere, and reduce them to the condition of property, would be a violation of good faith with Great Britain ; with whom we have entered into treaty stipulations to use our endeavors for the suppression of the slave trade. Our government know very well that Great Britain paid to Spain two millions of dollars, to induce them to give up this traffic ; and the United States have agreed to co-operate with Great Britain in putting an end to it ; and yet we are called upon by an officer of the United States to become auxiliary to persons engaged in this foul traffic I say Great Britain would have good ground to complain of us as violating our treaty obligations. Our treaty with Great Britain was in existence when the Spanish treaty was made ; the latter, therefore, must have been made with reference to the former. And nothing can be deduced from the language of any one of these articles, by which officers of the United States are to become actors in any process for reducing men to slavery.

They cannot be held here under a criminal process, for what took place on board the Amistad ; for a robbery or murder committed on board a Spanish vessel cannot be held as within the jurisdiction of the Courts of the United States.

I think, then, upon every principle, these persons must be declared free—to be entitled to their liberty ; and that they cannot send us back to the District Court, because they are no party there, and that Court has no jurisdiction over them.

R. J. Ingersol, Esq. I had not anticipated that, on this preliminary question, the gentleman would have gone into the merits of the question ; much less that he should have taken for granted facts of which there is no proof—that which we utterly deny—and much less, that the gentleman should have found it necessary again and again to have alluded to these foreigners in the manner he has, because they come from a country where slavery is tolerated. I know not why the gentleman should so often have treated these men as slave-dealers and pirates. Surely, he could not have supposed this would have any influence upon grave judges, who are to decide on points of law.

I did suggest to this honorable Court, whether they would go into the inquiry whether these persons are property, because I supposed this question belonged more properly to the Court where the process is pending. If there is any thing in the returns that is deficient, we are willing to go into the investigation. If there are defects in the process on which these persons are held, let them be set at liberty. I am not unwilling to meet it. But the question is whether they will go into these other topics.

It has indeed been contended, that from the process issuing from the District Court, and from liability to be detained under the claim of Lieut. Gedney, these persons are discharged, and therefore no subsequent proceedings could effect them. I did not so understand his honor, the District

Judge. He intimated that they could not be sold; but does that show they are discharged? He has not finally disposed of the question. How was it in this very case of the Antelope, to which allusion has been made? They there decided that the Spanish slaves should be restored, not, as the gentleman says, but because they were property: but as to the others, the Portuguese part of them, they were to be delivered up to the President of the United States, because there was no evidence that they were property.

Suppose, under this libel, which Lt. Gedney has filed, the District Judge has decided that these persons cannot be sold—would not the attachment hold as it did in the case of the Antelope, that they should be delivered up to the United States? These persons having been libelled as property, if his honor is of opinion that they are not property to be sold, it is his duty to make an order that they should be disposed of according to the laws of Congress. They were in custody of the Court—the attachment was not destroyed—they were still in custody of the Court; and it was the right of any other persons who had claims to file their libel. They were then lawfully in custody of the District Court.

Again, we have been told that these persons cannot be considered as property, because this is a free country. We are before a Court acting for a peculiar kind of government. In a part of these States, slaves are recognized as property. It is idle for the gentleman to stand here and say they are *persons* and therefore not *property*. The very case cited, shows that there may be slave property belonging to foreigners as well as citizens of the slave states.

The treaty provides that all ships and merchandize whatsoever that shall be taken by pirates shall be restored. Now, I ask, when the Spanish government negotiated that treaty? The gentleman has pressed an argument from the fact that in 1819, the slave trade was not recognized as lawful, by the government of Spain. The gentleman ought to have told that the treaty was negotiated in 1795, under President Washington, who himself, recognised property of this description, and renewed in 1819, in precisely the same language. Thist reaty was made when most of the States in this Union recognized this species of property, and the United States government up to this day, recognise it; and when vessels have been wrecked in Cuba, with slave property on board, they have claimed their restoration; and even when one of our ships gets into possession of the British authorities with slaves on board, our government claims their restoration. We know further, that, after the late peace with Great Britain, there was a commission for the valuation of slaves carried off during the war. And are we now to hear an argument that there can be no such thing as property.

But there is another article in the treaty with Spain, the sixth article, which provides that each party shall endeavor, by all means in their power, to protect and defend all vessels and other effects of the citizens of each, and to restore the same, &c. There is, then, an obligation resting on the Government of the United States, whenever the property of Spanish subjects comes within its jurisdiction, to restore the same. The ninth article has a peculiar phraseology—the property is not to be placed in the custody of judicial officers; but it shall be delivered to the officers of the port: and it is made the duty of such officers to see it restored. Was it not, then, the duty of the District Attorney to ask the Court to inquire into this matter?

But, says the gentleman, that means no more than that you may come into our Courts, on the same footing as our own citizens. Did we not mean more than if one of our vessels was taken by pirates, and recaptured and taken into Court by a Spanish vessel, we should have an opportunity of going to Madrid, and waiting the slow process of a Spanish court, for the restoration of the property on board? The twentieth article guarantees that each party may resort to the courts of the other. Why, then, did they allude to the subject in the ninth article, unless something more was intended?

Another idea advanced by the gentleman was, that these Spanish subjects could not file their libel in the District of Connecticut. Where then? Was not the property brought here? Could they get process in the District Court of New York, to operate upon property in the District of Connecticut? So, as to the libel filed by the District Attorney—the doctrine advanced by the gentleman would go so far as if the

capture is made in the waters of New York, and subsequently brought here, no process could be issued that would hold it. In the case of the Antelope, it was decided, that, when a foreign vessel engaged in the slave trade is captured, it must be restored: yet the gentleman says the moment they touch the United States, they become free. In the fourth volume of Wheaton's Reports, p. 680, these points are brought together. The African slave trade, which has been authorized by all civilized nations, cannot be repugnant to the law of nations, except with those nations which have renounced it. A foreign vessel, captured in time of peace, engaged in the slave trade, will be restored, even if the nation to which the vessel belonged, had prohibited it.

I think in this stage of the case I have cited enough from decisions of courts of the United States, to meet all that has been said. If this is a case appropriately within the jurisdiction of the District Court of Connecticut, then I suggest whether that is not the appropriate place to have it decided, and not upon the habeas corpus; and that, in hearing this case we conform ourselves to the process.

These persons were libelled by the capturing officer—they were in the custody of the Court—two persons come into Court and file a libel that these persons are their property. The gentleman says these persons have been brought from Africa. There is no evidence of that. By the laws of Spain, whatever ordinances may have been issued against the slave trade, these persons are property in the Island of Cuba. The claim on this libel is, that they are property by the laws of Spain. That is the question to be determined by the District Court. There it may be necessary to send to Cuba to ascertain what the Spanish laws are. The gentleman says, "you shall not have time to show that they are property. We will bring you up on the habeas corpus, and on the principle that persons must be free, they are to be set at liberty." I ask, then, whether we shall go into this question of property, on this summary process?

The suggestion that these claimants were ever engaged in the African slave trade, or that they knew any persons that are so engaged, or that they knew these persons to have been brought from Africa, is utterly unfounded and entirely gratuitous. They stand precisely as the inhabitants of nine of these States now stand. All they ask is, an opportunity to prove it. If there is any thing wrong, on this process, we are able to meet it. But on the other questions we wish to have the opportunity of going into the other court, and having time to authenticate our claims. But to undertake these questions on the writ of habeas corpus, the greatest injustice may be done. The Attorney of the United States has, with great propriety, filed his libel, that, if under the treaty with Spain, we are bound to restore, the public faith should be unimpaired; but if not, such an order should be made under the laws of the United States, as will enable them to return to Africa. We think this Court will not, in this summary manner, take the case out of the District Court.

S. P. Staples, Esq. I do not know precisely what the gentleman intends by the preliminary question; but, whatever may have been his intention, I shall proceed to argue the whole case. We are placed before this honorable Court in this singular position. Here are certain parties concerned in vindicating the right of property in third persons; and they wish to take these persons and confine them till this litigation is closed. Here are the claims of the Spanish owners; of others claiming liens on their property; and others equally unfounded. And under all these cases the rights of these persons are left entirely out of the question, and they are left to be incarcerated in prison, till these litigants settle their rights. In this situation, these children come and ask the interference of this Court, so far as their personal rights are concerned. And they ask this on the appropriate process—the process which renders all our guaranties of civil liberty available—the great palladium of civil liberty. This writ is not conversant with the lower and more vulgar objects of property. The aim is much higher. It reaches the higher elements of society—the life, liberty, and safety of the citizen. No third persons can come in, and, under the plea of property, obstruct the progress of this great conservative writ.

How are we situated here? Certain persons belonging to the African Continent—to a foreign government—citizens and subjects of exceedingly tender age, are, by means that I will not now name, brought before a Court of the United States, by

persons litigating the question whether they are property—whether they have any human soul, or whether they are to be regarded and treated as cattle, boxes, bales, merchandize. This is the question these persons choose to litigate. When a man introduces a bill of sale of a horse, the simple question is, as to his possessing the property. But, when a bill of sale is offered, of a human being, soul and body, very different questions arise. They may traffic as much as they please, they cannot affect the rights of persons originally free; and these Spaniards, who say they bought these persons in the Island of Cuba, do not thereby set up a right to these persons. There may be certain indications, which might be recognized as evidence of persons being in the condition of property in the Island of Cuba; but I know that our laws look at this matter in another light. Yet, we are here called upon to divert our attention from the main object of this writ—to turn our eye from this real transaction, and shift it off as a matter which concerns goods and chattels, because here are questions pending about property. Gentlemen, go on with your litigation, as to the Amistad and her cargo, to your hearts' content; but take not these children and deprive them of the habeas corpus, under pretext of a question whether they are brutes or human beings. That won't do—that's assuming a doctrine we dont assent to. It is, therefore, impossible to look at the habeas corpus, in connection with such considerations—it spurns all the interests of property. We are entirely upon personal rights. If there is any thing in the District Court relating to property, we have no concern with it.

It is said these persons are bound over as witnesses. If it were necessary and proper, after the disposition which has been made of this part of the case, I think it could be made to appear, not only from the tender age of these children, that they could not be held as witnesses; but also, that the supposed crime, concerning which they are held to testify, and all the orders concerning it, are without the jurisdiction of the United States. I take it the slave trade is not yet positively decided to be against the law of nations. So far as our courts have had it under consideration, they have not been disposed to recognize it as against the law of nations. They may be expected to walk slowly towards this point; so long as so many of our States are so connected with this subject as they are at present, they must go on with great caution. Therefore, now, the slave trade is not considered as against the law of nations. If it was, the United States might have jurisdiction in this case. But the United States do not so consider it. They consider their jurisdiction in this matter, as extending no further than their own vessels, or their own citizens on the high seas.

AFTERNOON.

Judge Thompson, to the Grand Jury.—I do not deem it necessary, for the purpose of discharging the duty devolved on the Court, in consequence of the question presented by the Grand Jury, to enter into any formal charge; but simply to answer the inquiry, whether, under the circumstances stated, this Court has jurisdiction in the case.

The general rule of the law is, that the Courts of the United States have jurisdiction only of offences against the laws of the United States. These laws grow out of the statutes of the United States. In addition to this, there may be offences committed against the law of nations, of which the courts of all nations have jurisdiction.

The question arises, under our statutes, in two distinct branches; because, under the laws of the United States, the jurisdiction of the Courts of the United States, is held and confirmed to certain districts.

The first question is, whether the offence charged, according to these facts presented, is, whether this is the proper district in which this case is to be tried, if triable at all, before our courts. The law is, that all offences committed on the high seas, shall be tried in the District where they are apprehended, or, where first brought in. A question might arise as to the term *apprehended*. If that means *judicial process*, then there had none been issued. But my apprehension is, that the term has reference to any constraint in taking, for the purpose of having them brought to trial. In that sense, if that is the true meaning, there may be two cases, the one where apprehended, and the other where brought in. If the party escapes into one of our States, and lands, there is no authority to take him to another district. The word *apprehended* means any lawful authority exercised in the taking of an offender. Under this view,

these persons were apprehended within the District of New York ; and, therefore, under no circumstances, even if the Courts of the United States have jurisdiction, could these persons be tried in the District of Connecticut. But I do not think it necessary to put it at all upon that question ; and these views are thrown out, rather to serve as a guide in future proceedings of this kind, than as being necessary in the decision of the present case.

I lay that out of the question, because, according to my judgment upon the merits of the case, the Courts of the United States have no jurisdiction in the case. Admitting that this offence—if it was an offence—and on that question, I express no opinion—that offence was committed on board a Spanish vessel, bearing a national character, as a Spanish vessel, with a Spanish crew and commander, and Spanish papers, as a mere coasting vessel, on the Island of Cuba. The question arises, whether this Court has jurisdiction of an offence committed on board a Spanish vessel of that character. It must be either an offence against the laws of the United States or the law of nations. The statute of the United States is broad. If any person commits an offence on board an American vessel, our Courts take cognizance of it. This is not a new question. The Supreme Court have decided the broad question, that this act does not apply to any offence committed on board a foreign vessel. The Courts of the United States have not jurisdiction of any offence whatever in these circumstances. This is founded upon the most sound and solid principles of justice ; because the courts of one country have nothing to do with the criminal laws of another. The vessel sailing under the colors of any country, is considered as a part of that country. This is just as if the offence was committed on land—on the Island of Cuba ; and our Courts have no more jurisdiction in the one case than the other. If we have not the right to try an offence committed on land, in a foreign country, we have not the right, when committed on board a national vessel, or any vessel, under the papers of a foreign country.

The Court, however, in the case of the United States *vs.* Palmer, intimate, and it is not denied by this Court, that the courts of the United States have jurisdiction of offences committed against the law of nations. But, in reference to that, though there is nothing stated in the facts, even admitting that this vessel was a slaver, the Courts of the United States have decided over and over again, that the slave trade is not a trade against the law of nations. They have endeavored to get it so arranged as to consider it piracy to be concerned in this trade ; but this has not become so universal as to be yet considered as the law of nations. Even, therefore, if this should turn out to be an importation from Africa, it could not follow that it would bring the case under the jurisdiction of the courts of the United States. I forbear to go further. I have no hesitation in telling you, that, under the state of facts presented, this court have no jurisdiction ; and that there is not enough by which you could found an indictment.

Mr. Staples.—When the Court adjourned I had made all the observations I had proposed to make showing the nature of the habeas corpus ; showing that it did not at all interfere or intermeddle in mere matters of property. And I was going on to speak of the order which held them to appear as witnesses ; but that question is now disposed of.

Another ground on which they were held, has been disposed of by the decision of the District Judge, in the case of Gedney's libel for salvage.

The third ground of detention is founded upon the libel of Don Pedro Montez, claiming for himself that he is a Spanish subject, domiciled in Havana, in the Island of Cuba, and the owner of these slaves, and the right to them as his property—the right to come before the Admiralty Court of the United States, and demand the return of these Africans as his slaves. This is a novel proposition. I know, that, by the constitution and laws of the United States there is a provision growing out of our compact, when a person held to serve in one State escapes to another, he is to be delivered up. This is the whole extent of the power that any holder of any person as a slave, can claim to be exercised in the United States. It is a power growing out of the Constitution of the United States, and is strictly conventional—it was what the convention agreed to—what every citizen, however painful, is bound barely to execute ; *but not an iota further.* No good

man, who is not bound by the Constitution and laws to interfere, will interfere. The magistrate is bound to interfere, when called upon by the owner of the slave. But, if the slave escapes from a foreign country to the United States, would this Court interfere to deliver up that slave? Would they execute this law, insisted in, as a law of the United States? We find it decided that the Courts may interfere if a slave escapes from one State to another; but if the master brings him, he is free. This has been decided in Pennsylvania, and in Louisiana. In Louisiana, it has been held that, if a person goes with a slave into a country, where slavery is not lawful, the the slave becomes free, and will be so held in Louisiana. I read this out of a number of cases, from a pamphlet containing the decision of the Supreme Court of the United States in 1796. Every state in the Union has decided the same thing; and they hold the parties strictly to the proof, 1. That the person has escaped; and, 2. That he is his slave. But there is no instance in which the laws have interfered to aid the foreigner in reducing his slave. The reason is this: all the laws of one country are not to be enforced in the tribunals of another. If a man in Turkey should marry two wives, and came with them to Connecticut, could he plead the Turkish law in justification of his conduct? A great variety of cases are mentioned by Lord Mansfield, which show the law on this subject. The rule is, that the *lex loci* are to determine what part of the contract is to be enforced —if there is anything objectionable in the contract, anything that cannot be carried out without interfering with the laws of the country where it is attempted to be enforced, the Courts will carry out the laws of the country where the contract was executed, than is consistent with the statute where it is attempted to be enforced. And, is there any law more abhorrent to the feelings of a good man, than that one man may suject another to his arbitrary will for life? What! in a Christian country, that one man may subject another, in the likeness of his Creator, sent here to prepare for a better state of existence, so as to deprive him of his free agency, as an intelligent being? This is no place to discuss the odious nature of slavery; but I ask, is the law of Cuba to be enforced here? Are the Courts of the United States to be required to prefer this law to their own, for the purpose of reducing these children to slavery, for the gratification of the lusts of this man who claims them as his property? When this Court finds itself in such a position, they will, in the language of Blackstone, either resign their seats, or declare there is no such law. What is required here? Here is a man---and it shows how far, by the course of things in society, a man's feelings may be blunted—how far the slaveholder may be brutalized —that this man has the matchless impudence to come into court here, and ask the aid of our laws, to enable him to secure for life, these children, who, at their tender age, have been torn from the arms of their parents!

But further, as has been said, the king of Spain, after he had been made to drink the cup of bitterness in exile—after he got back to his throne, seems to have got some just glimpse of human liberty, and he joined with the other European powers, in an agreement for the suppression of the African slave trade. The gentleman has attempted, very faintly indeed, to make it appear that there is no such law in Cuba. We present him with the law of Spain, enacted in 1817, which has been copied and put into our reports. We have it here decreed by the king of Spain, that all Spanish subjects concerned in this trade, are to be considered as felons, and banished. This shows, also, that, by the laws of Spain, no man can claim property acquired by felony. The same decree declares that every African, as soon as he arrives in the territory of Spain, is free, to all intents and purposes. I know very well that slavery is so awfully corrupting, that, in the Islands of Cuba, for a stipulated price per head, slaves are permitted to be landed; and the same person who brought them from Africa gets a permit to send them, perhaps in the same vessel in which they were brought, to another part. I know also that this practice tends to do away the law of the King of Spain, and to harden the breasts of his subjects; but it does not show that the slave trade is legalized in the Island of Cuba.

But the question here is, who are these children? Whence came they? On this subject, we have an African, a colored man, an interpreter, who has been with these children and examined them; and

he says they are native Africans. He gives their ages; and the reason for believing them to be native Africans is, their whole language is a dialect of Mandingo. They have no knowledge of the Spanish language. This, at their tender age, is decisive—it is the best evidence we could have.

Well, if these children were born in Africa, they are not old enough to have been brought into the Island of Cuba before the law abolishing the slave trade. If the African question is settled, they must have been brought to Cuba since the treaty of 1827. There is also the testimony of another African interpreter. He gives the same facts. He says they are of the African race—they speak a language spoken no where else but in Mandingo. Their own story is also put on record, but it would be mockery to attempt to introduce it here. We have the highest possible evidence, not direct, that these children were born and bred in Africa, where, and where only, they could have learned the dialect they now speak; and that they were brought to Cuba after the treaty alluded to; so that, immediately after they reached the Island of Cuba, they were free; and no subsequent purchase could make them slaves.

But what are the presumptions? That every person who is not proved to be a slave is free—every where, except in certain quarters, where they find it convenient to presume that every man of a certain color is a slave. But that has never been resorted to by any judge out of that territory. The presumption is entire and perfect in favor of the liberty of the subject, till the contrary is proved. One of the very papers they take, to legalize the transaction, declares them not to be indigenous—not natives of the Island of Cuba. If they are admitted not to be natives, the testimony is still more strong that they are free.

But it is suggested, and I should judge from the form and manner of the claim put in, that these Spanish claimants have an idea that, if they *purchase* of another, that sale and purchase makes the person purchased a slave. The law on this subject is perhaps better collected in Woodson's Lectures, than any where else—2 Vol. p. 428, and on. It is also found in 1 Kent's Com. p. 184, 2d edition. "No change of property is worked by captures by privateers, pirates, or thieves." It is also found in 4th Robinson's Admiralty, p. 3; and there are some very striking cases in the old books, Marsh, 110; Gobalt, 193; Coke Elizabeth, 685; 2d Azooni, 362. All agree in this, that no change in the possession of property, or the elements of property, taken by pirates or thieves, can ever vest property in others. Nothing is better settled than that he who receives property taken feloniously, gains nothing, and is as guilty as the person who takes it. So any person who purchases a slave, taken in contravention of the laws, cannot hold him, nor can the purchaser under him. For this purpose, if we look at the laws of Spain, they are just as fatal to the claim here set up. The Spanish law forbids his having this kind of property, and makes him guilty of felony. And this rule is just as applicable to a *malum per se* as *malum in se;* for the law makes no difference. But this is against both, and the law is highly penal. But, if it is said that these Spanish subjects bought this property openly in market, without knowing it to have been feloniously acquired, there are two answers: 1—He who purchases wares, verily believing them to belong to the person selling, if it turns out that they were stolen, gets no title. But, 2d, Don Pedro Montez has not even that excuse. He must have seen them children. He must have known that they were not rightfully in Havana. He was bound to know; for, if not, he had no right to purchase. Their language—their tender age—show this. I do not know that it is denied that he was an actor in bringing them from Africa. But that makes no difference; because, to take them from the slaver is a crime of equal magnitude. We then have a claimant who purchased these three children under such circumstances. I ask, then, what foundation this claimant has to these persons as his slaves? What foundation to come into the Court of Admiralty and claim their restoration? Are the Courts of Admiralty in this country to do the duty for foreigners, imposed by our compact upon the judge or justice, in the case of the slaveholder from another State? How would this look upon the records of the Court of Admiralty? And what would be the judgment entered? If I understand the nature of

the proceedings there, there must be some note of judgment, but not of this kind; the property is taken into the Admiralty for the purpose of being condemned and sold; but who ever heard of a case in a Court of Admiralty to determine the right of a slaveholder to the possession of a person whom he claims as his property; and that, sitting in a free country, and where slavery is forbidden by the common law, and abhorred by the people? Because in Connecticut and the other free states, slavery is as much spurned as in Great Britain, or any where else. And where are those people who set up the claim that the people of the North have nothing to do with this matter? They are mistaken. It is a subject they will presume to think and talk about. It borrows no aid from the fact that it is practised in many of our states; we are not in those states—we are in a free state, and the law and the atmosphere is as free here as any where. And will our Courts of Admiralty consent to set up as slave catchers for foreigners?

There is no other thing—nothing else to be done with these persons. His honor the Judge of the District Court has thrown out that he can give no order for the sale of these persons. Why not, if he can treat them as property at all? Is that any less odious than taking jurisdiction of this property, and delivering it over to these Spanish claimants? It seems to me there is an end to all inquiries of this sort the moment it is admitted that the property cannot be sold. Suppose the whole property had consisted of slaves, and Lieut. Gedney were claiming salvage for saving the lives of these slaves—suppose the forty-two slaves were the only property brought in—then the question would arise, whether these slaves are subject to salvage at all. If the Court enter upon it, they must go through. Suppose the Court decide that the salvor is entitled to fifty per cent., and the owner is unwilling or unable to pay it. What will the District Judge do then? The slaveholder folds his arms and looks at the Court with perfect contempt, knowing that they have determined that his property cannot be sold to pay salvage. Will the Court enter upon proceedings that will terminate thus? The claimant would come into the Admiralty and claim his whole property. I put this case to show that every step of this proceeding is fraught with absurdity, unless the decision be, that they cannot be treated as property at all.

It seems, therefore, that this Pedro Montez has no claim before the Court of Admiralty. If they were cast in here, it may be the fortune of Pedro Montez; but it is the good fortune of these Africans.

I know it may be said they come to the result in some sideway manner; but that is not the way the Court proceeds.

In the remarks which have been made respecting the seizure being made on land, I fully concur.

Now, as to the claim of the District Attorney:—

1. He acts here in some manner in aid of the movements of the minister of Spain. How, we know not.

2. He acts for the Executive of the U. S., on the supposition that these Africans may, in some respects, fall into his hands. On that subject, the law is perfectly clear. If these slaves were not brought in here by American citizens, or in American vessels, the President of the United States has nothing to do with them. These laws all refer to the vessels of the United States, bringing in slaves in violation of the laws of the U. S. Then, under certain circumstances, the President may make provision for returning them to Africa. But all these provisions are entirely aside from this case. These Africans were not brought here in an American vessel, nor in violation of our laws against the slave trade. It would not be fair to charge these Spaniards with introducing these slaves against the laws of the United States. If so, they would have business enough of another description to attend to. The Court will find these laws apply only to the cases specified. This is the case of a Spanish vessel, forced in by necessity. If they voluntarily come in, they violate our laws.

The next inquiry is, has the Spanish minister any thing to do in the case? I apprehend not. When the owner is present making his claim, no consul or minister can interfere. The consul interferes and claims property, when he understands it belongs to subjects of his nation. He claims it for the nation to which he belongs. Precisely such is the claim of the Spanish minister. But who ever heard that the

consul puts in a claim, when the subject is present? This disposes of the claim of the consul and minister.

But, it has been supposed, that the President has something to do with these persons, in consequence of articles of treaty. So far from this, it is decidedly the other way. The negotiator, Mr. Pinckney, so far from wishing to incorporate this principle in the treaty, insisted on directly the contrary. The sixth article of the treaty provides for the mutual protection of each other's vessels, in each other's jurisdiction. Now, in what method is this to be done? Through the courts of justice. They are to do this, certainly, in this country, where all judicial power is vested in them. If property comes in here, belonging to Spanish subjects, and it is brought in by a nation at war with her, we are to see it restored. How restored? By calling on the Executive? That might be, under certain circumstances, where there were no claimants; but where the claimants are present the President has nothing to do with it.

The seventh article shows clearly what they mean. The subjects or citizens of each, are not to be made liable to any embargo or detention; and in cases of seizure, within the jurisdiction of each other, the same shall be made and prosecuted according to regular process of law only; and the citizens of both parties shall be allowed to employ such agents, counsellors, solicitors, &c., as they may deem proper and necessary. Here is direct reference to the Courts of justice. It shows that, when any process is instituted, it is not to be disposed of by an order from Washington or Madrid.

The eighth article relates to vessels forced in by stress of weather.

I ask if there is any thing here that goes to show that any difficulties are to be removed by executive interference? If any question arises, as to vessels forced in, I ask, where are they to be decided? Suppose a vessel so situated is claimed for debt;—suppose a citizen of this country has a claim against the owner of the vessel—may he not attach it? Must the Executive take it out of his hands? They are to be permitted to repair their ships, to victual, &c. Suppose they fail to pay their bills, could not they be libelled? Every question must be settled by the tribunals of the country where they arise.

The ninth article directs that any articles rescued out of the hands of any pirates or robbers on the high seas, shall be delivered to the custody of the officer of the port, to be delivered up to the owner, as soon as due proof shall be made. Some contend in relation to the term *officer of the port*, as if this property was to be delivered to the master or naval officer of the port. I do not admit this construction at all. This is an expression used to denote the proper officer to which such business belongs, in the port where the property is brought in. To whom is this property to be delivered up? Is it to those who come in and say they are the owners? The property is to be restored to the true proprietors. Suppose this vessel was claimed by one who says it was taken by his captain and run away with—could he not prove it? If so, who is to be the judge? Is the Executive? Is the minister of Spain to make application at Washington? If so, to what department shall he apply? Shall he apply to the *Patent Office*, to get this property without suffering a Court of justice to adjudicate the matter? It is to be delivered to the officer of the port, to be delivered to the true proprietor. Suppose another Spaniard claims it, could he not file his claim before the same court—could he not make application to prove that he was the real owner? But where shall he apply? Certainly, not at Washington.

And, if this article is to receive the construction attempted to be put upon it, then the property is to be restored entire, free from all salvage and all claim. But, the true meaning is, that the property is to be held, subject to the rights of all the parties concerned; and the property to be delivered up, when proof of ownership is made. But the Executive has nothing to do with it; he cannot have proof; he will make no inquiry.

There was the case of Jona. Robbins, delivered up for having committed murder; but, in this case, the Executive acted in conformity with an article in the treaty, making express provision for the delivery of fugitives from justice. The hearing was before Judge B., and it was referred to him to decide whether any murder had been committed. This was in the time of the elder Adams. After this was done, Edward Livingston moved a resolution in Congress, censuring Mr. Adams for deli-

vering up this man. The discussion was carried on by Livingston, Gallatin, and Marshall; and it will be seen in Wheaton's Reports, that, afterwards, every principle here maintained by Marshall, is carried out by him afterwards as Judge.

[Here Mr. Baldwin read a letter from Mr. Madison, in 3d Hall's Law Journal, showing that no such prerogative is vested in the Executive; and that the claim for the delivery of fugitives can only result from special provisions of treaty.]

Mr. STAPLES.—This argument of Marshall's is beautiful. He had keen, sagacious enemies. Gallatin led the van. After yielding the point first set up, they settled down upon the censure of Mr. Adams, that he had interfered with the judicial authority, and ordered Judge B. to deliver up. All agree that it would have been wrong for the President to interfere, except on the express provision of the treaty; then, he contended it was very proper for him to assign the Judge to hear all the evidence. Mr. Gallatin, who then led the corps of opposition to the administration, put this case:—suppose this man to be an American citizen, impressed into the British service, and that he had killed one of the press-gang, or one of the crew, in making his escape. Gallatin asked where that man should be tried. Marshall answered, just where the facts indicated—if the facts were as stated, he should be tried here, and not delivered up.

[Here the affidavit of one of the prisoners was introduced.]

AFFIDAVIT OF BAHOO.

I, Bahoo, of Bandaboo, in Africa, being duly cautioned, depose and say, that I knew Marngroo and Kenyee, two little girls, now in prison at Hartford; they were born at Bandaboo, in Mandingo, and came over in the same vessel that I did to Havana, as did Penna and the little boy Carre; that they were about two moons in coming from Africa to Havana, where they staid less than one moon. Good many in the vessel, and many died—were tight together, two and two chained together by hands and feet, night and day, until near Havana, when the chains were taken off—were landed on the coast at a little place, near sun set—stayed until night, and walked into the city, put them in an old building, and fastened them in—after some time the people now in jail were put on board the same vessel they came here in, in the night, and sailed away about the time the gun fired. I know that these children are the same that came over from Africa, and that Marngroo and Kenyee were born in the same place I was, which was Bandaboo, and further saith not. BAHOO, his + mark.

State of Connecticut, Hartford, September the 20th, 1839.

Mr. STAPLES.—This is a very able discussion, showing what are offences against the law of nations, and against any particular sovereignty. None, however, pretended that the Executive had any right to deliver up, except by the 27th article of the treaty with Great Britain.

JUDGE THOMPSON.—Has it never been held to be in the discretion of the Court to deliver up?

Mr. STAPLES.—Never. Chancellor Kent decided that, by comity of nations, he could deliver up; but Justice Tilghman decided the other way. He says those that have contended for the right, have maintained that, for *political* offences, they should be delivered up. This, he says, is the very case where they ought not to be given up. And, if they would refuse it in a political case, I presume they would where the intention is to enslave them. Suppose an armed force should land here and seize these persons and carry them off, would it be any offence against the United States? No. It would be for the Executive of the State of Connecticut to move, and if he did not, the people would move him. In the case of the Bambers, who were taken up, and about to be carried out of the country, nobody thought of applying to the President of the United States. It was a matter entirely between the Executive of the state and the parties. If a claim is made for delivering up these persons, it must be upon the Executive of the State of Connecticut; and I presume the present Executive of the United States, with his characteristic caution, will not move in this matter. I should like to see that authority, on which the District Attorney has filed his libel.

DISTRICT ATTORNEY.—It came from the Department of State.

Mr. STAPLES.—I should like to have it on record.

JUDGE THOMPSON.—The libel of the District Attorney is presented under a two-fold character,—1. The application to

deliver up; 2. Under the laws of the United States. These laws certainly do authorize the President to issue orders for apprehending all vessels illegally engaged in the slave trade. Then the law puts those recaptured from slavers, into the hands of the President, for the purpose of sending them back to Africa. If there is an act of Congress that brings these persons within the spirit of it, it may be a question whether the Court is not bound to retain them for that purpose. The difficulty was, if these slaves were put into the power of the Executive of the States, the state of things in some of the states might lead to their being sold into slavery; and it was for the very purpose of guarding against this, that they were put under the authority of the Executive of the United States, with the injunction of sending them back to Africa.

Mr. STAPLES.—So we understand it. And, if this were a case where these Spaniards had come in voluntarily, in violation of the laws of the United States, it would bring them under this act.

JUDGE THOMPSON.—The great difficulty is, laying out of view all these questions of libels, they are now in the custody of the law, and what is to be done with them? I should be glad to have some answer to this question.

Mr. STAPLES.—I suppose, if they have committed no offence against the laws of the United States, nothing can be done with them. These laws have no claim upon them. I consider that they did not come in at all in violation of the law. If they did, the President would have a right to interfere. But they have been brought into Court as property.

JUDGE THOMPSON.—My object is really to get information. If they are dismissed what provision will be made for them? They stand here without any criminal process against them. According to the laws of the State of Connecticut, is there any authorized provision for their support?

Mr. STAPLES.—They would be provided for as foreign paupers. The citizens of Connecticut would be very cautious about delivering them up to any pretended friends, who might possibly stop short of Africa. But the State of Connecticut is bound to take care of them. But, they are not to be holden by the laws, under these circumstances.

[Here the affidavit of John Perry was introduced, to authenticate that of Bahoo, in the taking of which, Perry acted as interpreter. Mr. Ingersoll wished to examine Perry; which was acceeded to. On this examination, Perry said it was about seventeen years since he left Africa—his age at that time was guessed to be 11 or 12—supposed himself to be about 30 now—was not a native of Gallina—staid there a good while—should think better than a year—learned the language during that time—came from Gallina to the West Indies—had an opportunity of speaking the Gallinas language once or twice a-week, when he could get a chance of visiting a plantation, where there were natives Gallinas. Understood Bahoo to say he understood what he said—is sure he understood him well. Bahoo is Mandingo, but speaks Gallinas.—Explained to him the questions—told him what the justice told him to say—inquired whether he understood about God—made him understand he was sworn to tell the whole truth—told him he would be punished if he did not—he appeared to understand and believe it. Saw these persons in New Haven—had no difficulty in conversing with Bahoo, and he could converse with others. The Captain of the vessel which brought him (Perry) from Africa, was a native of Baltimore—took him from Surinam—came to St. Thomas—staid there some time—went round with him—afterwards went to Laguyra—master bound him for five years. The law of General Bolivar freed him. Came to this country in 1830—was in Baltimore 18 months—went back to Laguyra, and afterwards came to New York, where he has remained ever since. Has kept up his knowledge of the Gallinas language, by opportunities of talking with persons who have come from Africa. When he first saw these men, and spoke to them, they manifested much joy.]

Mr. HUNGERFORD. I had supposed, when Mr. Ingersoll, made the preliminary objection, the court would not suffer the merits of the case to be gone into, till that preliminary question was decided.

JUDGE THOMPSON. I cannot see how there can be any preliminary question, because, when a party is brought up on the habeas corpus, we must go into these inquiries, in order to ascertain the true state of the case. If they are in the custody of any court, it is necessary to inquire into the process which holds them.

DISTRICT ATTORNEY. In explanation

of the course taken in behalf of the government, it may not be improper to say a few words. The claim put in, in behalf of the government, is two-fold. With reference to the first, I will say nothing, but to correct an error that some have fallen into, in regard to the treaty with Spain. The only treaty with Spain, is that of '95. There was a convention in 1819; but in that convention the treaty of '95 was not spoken of. The only object of this convention was for erecting a tribunal to adjust certain claims. As to the second branch of the claim of the United States in the District Court, I believe it is properly filed, and will ultimately be maintained. That proceeds upon the ground that there has been a violation of the laws of the United States, prohibiting the importation of slaves. How does this matter present itself? Here is a vessel freighted with Africans. They, at the time they were discovered, had control of the vessel. As to the national character of that vessel, I contend nothing is yet known. Nothing is more common than for a slave vessel to sail under false colors. We can, in the District Court, go into this question. For aught this tribunal knows, this will prove to be an American vessel. Then I say that this inquiry as to the true character of this vessel is the proper province of the District Court. I believe that, on examination of the libel, it will be found to bring the case within the province of that law, if the fact appear that the vessel is owned by American citizens.—(Here he read from the libel.)

It has been suggested that they came not upon this coast in a manner indicating a violation of that law. This, I have to say, is not ascertained. These persons are African negroes—free persons—they are now within the jurisdiction of this court, in the custody of the Marshal of this District. Such was the case of the Antelope. These blacks were in the custody of the Marshal of the District at the time that decree was made.

The affidavit of Perry is an additional reason why this matter should be investigated. This government knows not but these Spaniards were acting on board an American vessel. All these facts are proper to be investigated; and I contend that, while the investigation is pending, these negroes should not be liberated. It has been suggested that the government acts somewhat in connection with the claimants of the property. I ought perhaps to repel this. The government acts only for the purpose of sustaining the law of 1819.

Mr. Staples inquired if he claimed authority to imprison the slaves, under that law, without process against those who brought them in.

District Attorney. That law, (Gordon's Digest, p. 619, art. 3100,) provides that, in the event Africans of this character are brought in, in violation of that law, it is the duty of the President to provide for them and to send them to the coast of Africa.

[The counsel for the Spaniards, brought in Antonio, the slave of the Captain of the Amistad, to invalidate the affidavit of Bahoo. Antonio being able to speak only in Spanish, Lieutenant Meade, of the United States Navy, was introduced as interpreter. Lieut. Meade was first sworn; after which he explained and interpreted the oath to Antonio; and was then again sworn as interpreter. He was then directed what questions to ask, which he did, and interpreted Antonio's answers. Antonio said he was the slave of Captain Ferrar, who was Captain of the Amistad. He was on board the Amistad when the three girls were brought on board. They came after the other negroes were on board. The first came about 8 o'clock in the evening. Could see clear. All the world could see them. They were not confined. The rest were not on board even a quarter of an hour before the girls came. They remained in Havana one day. They walked about on deck, or went below, as they thought proper. They were never tied. Always treated them well—fed them well. There were ships of war in port—Spaniards and Yankees too. Great many English—Yankee men-of-war there—great many vessels, after sailors. Left port about four o'clock in the afternoon. Master, Captain Ferrar, has owned him since he was a very small boy. Always treated him well—not only his master, but mistress treated him well. Does not know Bahoo, the one that spoke to that man, (Perry.) Does not know him by that name.

Cross-examined by Mr. Baldwin. Thinks these negroes remained about half a month in Havana. They came in a vessel from Africa, under the Portuguese flag. They could not speak Spanish. They remained

on board the Amistad one day—could not sail sooner because the Captain wanted papers. They lay off not a musket-shot from shore. Captain paid no attention to the British cruisers. An awning was spread on deck, to shield them from the sun. Don't know who was the Captain of the vessel who brought them in. The Amistad was never before employed in carrying slaves—always employed in carrying sugar.

By Mr. INGERSOLL. Do you know that they came from Africa in any other way than that they told you so?

Antonio.—They told me so.

The DISTRICT ATTORNEY resumed—3d. Gordon's Digest, p. 460, sec. 1. says the President may, whenever he may deem it expedient, employ any armed vessel of the United States to cruize; and when any vessel is found violating the provisions of this Act, the commander of said vessel shall safely keep and deliver into the hands of the Marshal of the District all persons on board, and shall transmit to the President a list and description of the same, &c. And the President may make such arrangements for keeping and transmitting said negroes beyond the limits of the United States, as he may deem proper, and appoint such agent or agents as may be necessary for receiving them, on the coast of Africa.

W. HUNGERFORD, Esq.—I do not suppose it necessary to investigate the question whether, in point of morality, slavery is justifiable or not. There is very little doubt the more reflecting portion of society would like to see that system abolished. But it is quite too late to raise the question whether slavery is consistent with the laws of nations or not; and if any nation thought proper to sanction the introduction of slaves, that nation had a right so to do; and it is perfectly well understood that the trade has existed for a very long period of time; and slavery has taken a very deep root here and in the West Indies. And if this be a case in which, either by principle, comity, or treaty, these Spanish citizens are entitled to hold these slaves, we are bound, in some way, to devise a mode by which they can obtain possession of them; for, suppose a treaty binds to the surrender, and makes no provision for the manner the surrender is to be made, they are entitled to recover their property here, and this species of property comes within the meaning of the treaty.

In this case, a variety of claims are set up as reasons why they should not be discharged. We see from the state of the facts, that there is pending before the District Court,—(1.)A libel for salvage, by the person concerned in seizing this vessel; (2.)A libel in behalf of the individuals who claim these Africans as their property; (3.) A libel filed in behalf of the general government, with a double aspect, claiming possession of this property, that it may be restored to its owners, if it should prove that these persons are slaves; and if not, that they may be restored to their native land. Upon these libels, attachments have issued, and upon these, the property is attached. The question now is, whether these processes, or any of them, are sufficient to hold these persons in that court.

It has been supposed that the first libel is disposed of by the decision of the District Judge. I do not understand that decision to go so far as that the slaves are to be dismissed; but merely that they are not to be sold for salvage. Although this decides that they are not to be sold, it is altogether another question, whether they may or may not be holden for other purposes than being sold. This admits of very little doubt.

On the part of the Spanish claimant, a libel has been filed, in the District Court, and process issued upon it. The gentlemen have thought proper to be very severe on the individual who comes forward and presents this claim. Now, I do not think remarks of this kind can aid their cause, nor that they are at all justifiable. Slavery, as a system, exists; and I do not think it warrantable to apply every harsh epithet to those who, living where it exists, participate in it. It may be an evil; but it is an evil introduced at first without their fault. What is the claim of this individual? That he has a property in these three persons; and he alleges that he is an inhabitant of the Island of Cuba, where slavery is legalized—that he has become fairly their owner, by a legal purchase. The gentleman has been pleased to make the insinuation, without a shadow of proof, that these men were concerned in the importation of these men; or that he had any reason to suppose that they intended to violate the law.

Whether this man could or could not acquire property in these slaves, is the question. If slavery is allowed in Cuba, he could become the owner of them. Now, this is a question important for him to try

in a court where the whole subject may be brought before the court; and where every person concerned may have their interests fairly adjusted, and a reasonable time given for procuring proof. But the gentleman tells us that here could be no property acquired in this case, because it is repugnant to the laws of Spain, and therefore no such property could be acquired. We have not the statutary laws of Spain before us. I would submit whether the ordinance which has been read furnishes any evidence of the law of Spain; or whether we can take cognizance of it. If it were a question of common law, he might bring forward evidence to show what the common law of Spain was. But here the gentleman is not relying on any branch of the common law, but on the written law of that government. It is a matter of fact that slavery has existed there for two centuries; and it has become a part of the common law that slavery should exist. Instead of that, he has introduced no evidence to show that the law of Spain prohibited the importation of slaves. Now, I apprehend, when it becomes necessary to prove the written law, it is necessary it should be authenticated in the highest manner. I say then, the gentlemen have introduced no evidence at all on this point.

Now, if I am right, it seems to follow as a necessary consequence, that we stand on the common law of that country, which is, that slavery is recognized as legal and proper. There could be no difficulty, therefore, in acquiring property in the persons of Africans brought into Cuba. With the treaty arrangements on the subject of the slave trade, we have nothing to do. Any one nation may carry on the slave trade; and until that nation becomes a party to the general compact, it is at liberty to carry it on as it pleases. If there has been any arrangement made between the Spanish and British government, it is nothing to us. But the gentleman tells us there is a treaty between this government and Great Britain; and by that, we are bound to use our best endeavors to put an end to the slave trade. What did that contract mean between these two nations?—Not that we are to violate any treaty with other nations. If we are under obligation, by the treaty with Spain, to return these slaves to the Spanish claimants, that obligation must be discharged, and we cannot plead our treaty with Great Britain against it.

But, in addition, we are told that these persons cannot come before this Court—that this Court has no jurisdiction, &c. Now, if I am capable of understanding the treaty between this government and Spain, it is obvious that we are bound to surrender all property to the Spanish claimant. This extends to every species of property that is or can be recognized as such. There never has, to my knowledge, been any question raised; but if here two governments recognize slavery as lawful, if a slave from one comes into the other, his owner claims him, we are bound to surrender him; and as slavery is recognized as lawful here, that party has a right here to pursue his slave. This is the rule established by Great Britain, and that on comity merely. But, where the right of slavery is not admitted, they have not held themselves bound to deliver up. So far as our own country is concerned, there is no question but it has recognized slavery to its full extent. If, therefore, the principles of comity merely, I submit whether it is not proper and right for this man to prosecute the title to his property here. But this is not very essential to establish before the Court, because it is a treaty duty to deliver it up. If we are bound by treaty duty, it is obvious we are bound in some measure to give over the possession of this property to the owner.

But, says the gentleman, this is not the mode of pursuing his title. If the gentlemen admit that this is property, I would ask then what course they shall pursue to obtain possession of it, if not this? If this were a dead chattel, could it not be libelled here, by the subject of a foreign government? and would it not be the bounden duty of the Court to recognize it? I am sure there is no question of this; and if you recognize the right of property, I should be happy to know where is the distinction. But we are not without authority. If recognized as property, I would thank the gentlemen to inform us how it is to be restored. Now, here is property; and it is to be restored to its owner. How is it to be done? We are by no means without precedent. In the case of the Antelope, there was a libel filed for salvage; there was, in addition, a libel filed in behalf of the United States; also by the Spanish consul, and also by the Portuguese consul. What was done with it, in that situation? It was said one portion of the

slaves was the property of Portuguese subjects, and the other, of Spanish subjects. A portion could not be identified. The claim of the Portuguese consul was dismissed; but that of the Spanish consul was sustained; and the claim in favor of the United States was dismissed. The circumstances were these:—That vessel was hovering about the coast of Florida, under suspicious circumstances. It was taken by a vessel of the United States and brought in; and every individual having claims, put in their libels. The Spanish and Portuguese claimants stood precisely on the ground of those who now prosecute their claims. The power of the consuls went no further than that of the individuals, if they had been present. They filed their libel exactly like the libel here, except that they represented the interest of their government, and these are the individuals directly interested. If there is any mode of availing themselves of their property, this is the mode.

But, says the gentleman, this does not come within the cognizance of the District Court; because they were on shore.—They were on board the vessel. A few were on shore; but they were not all detached from the vessel—they were passing back and forward. This was their situation. Now, I will suppose, instead of a cargo of slaves, it had been a cargo of other property; and that, in an hour of distress, a small portion of the cargo had been landed, with the expectation of being retaken on board. If I am right, the Admiralty Courts would take jurisdiction, where they get it, a portion on shore and a portion on board the vessel, if it had gone on shore with the expectation of being returned on board. Suppose a cargo of property taken on board and seized by pirates; and a part was by them put on shore, and the rest retained on board.—I ask whether the District Court would not have jurisdiction over the whole? There is a case in Dunlap, p. 45, where it was decided that, in case of the seizure of a cargo, part landed and part on board, is to be tried by the Admiralty Court.

But there is another point in this case. If we have any right to libel this property at all, what else could be done by the claimant? It is very certain they cannot proceed against that property in the District of New York, for the reason that it must be a proceeding against the property itself. The District Court of New York would have no right to issue process against this property. It is very obvious they would be acting without their jurisdiction. The claimants must come within the jurisdiction where the property is. They must pursue the property where it is. It has never been possible for them to prosecute it in any other Court. They have taken the only course they could have taken to recover their property. It seems to me this is a very satisfactory answer to the claims made by Mr. Baldwin.

But, say the gentlemen, whenever these slaves come into this country, they immediately become free, and we have no power or control over them. I need spend no time on this point, for if there was property acquired in them, and it is within the province of our treaty, we are bound to deliver them up. Now, that they did not become free is very certain; and then, they are to be restored. But, the gentlemen says that, according to the Spanish law, or rather, the provisions of the treaty, it could not have been contemplated that this should have been considered property. Why not? If it was property by the provisions of the treaty, we are bound to use our best endeavors to surrender it up. The treaty comprehends *all property whatsoever*. Then, if this is property, and recognized as such, we are no less bound to surrender this than any other property. But, the gentleman says, that is not the meaning of the treaty, because the treaty was made after a certain ordinance prohibiting the slave trade. Although that treaty may have been revived in 1819, yet it was the same treaty as that negotiated in 1795, continued in exactly the same phraseology. Now, in 1795, how was that treaty understood? It remains confirmed, except Articles 2, 3, 4, 21, and the 2d. clause of 22. It is confirmed by the 12th Article of the convention of 1819. Now, if I am right, this treaty is to be construed in the same light as if this question had arisen in 1795; for it is impossible that exactly the same language should be used, and yet the construction different. So far as the slaves are concerned, it was as necessary that Spain should have protection for her slaves as in 1795, for slavery existed as much at the one time as the other, in the Spanish dominions. So that, neither the reason ceased,

nor was the language changed. The consequence is, we are bound to deliver up the slaves.

By the 6th Article of this treaty, we are bound to protest all vessels or other effects of the Spanish government or subjects, when, by stress of weather, or any other course, thrown within the jurisdiction of this government.

The 8th Section provides that, in case of pirates, privateers, pursuit of enemies, stress of weather, or other cause, they are driven into each other's ports, they are to be received and treated with all humanity. Now, it seems, this makes provision for every case in which a vessel is driven into our jurisdiction; and we are bound to restore it.

The 9th Article provides that all ships or property rescued out of the hands of robbers or pirates, shall be delivered to the custody of the proper officers to be restored to the true proprietors, as soon as proof is made.

Art. 10 provides that vessels wrecked or foundered are to receive the same assistance as the inhabitants of the country.

These provisions are all very broad—broad enough to cover even the claim we are making in this case; and if we recognize this as property, we are bound to restore that property.

But the gentleman says there is another defence: we are told that, as these slaves cannot be sold, no disposition whatever can be made of them as property—they must be set at liberty, and go where they please. The gentleman alluded to Judge Marshall's argument. But that argument was not intended to bear upon a case like the present. What were the facts? Robbins was claimed by the British government *as a criminal.* But is there any such question arising here? No; they are not claimed on the grounds of crime. The opinion of the Court has already been given as to their conduct, that the Court has no jurisdiction. They are not holden here on that. The question is, whether they shall be surrendered to the claimants or not, on the ground of property.

I think, the question has no bearing upon the case now before the Court. But this presents one of a totally different character.

Then, is there no mode by which these persons can be restored to the Spanish claimants? The gentlemen agrees, that, under certain circumstances it would be the duty of this Court to hold them to be restored. Now, I submit whether this does not come within those circumstances. Was it ever intended that slaves placed within the jurisdiction of this government should be thrown as a burden upon our population? It was thought to be an act of humanity that they should be restored. Now, if this does not come within the letter of the Article of the treaty, it comes within its spirit. Yet, I trust they are not to be thrown as a burden upon us. But I suppose these claimants have a right to insist on the restoration of this property. If so, there must be some mode of doing it; and I submit whether it is not competent for the executive to provide. But where is the difference? If to be done by the Court, it must be by an order of Court. In either point of view, it is to be carried into effect by the President, or by an order of Court. I see no difference.

In the great case in Great Britain, in the suit against Admiral Cockburne, the slaves escaped on board a British vessel. They were claimed by the owner in Florida. The British government held that they were not bound by the comity of nations to deliver them up; but they were holden, that he should have them sent to Bermuda, in such manner that they should remain till the government should settle the matter.

If they are to be restored to the claimants, it would seem proper that it should be by order from the executive department. But, if the Court decides that they are to be sent to Africa, still they must be held for an order from the general government.

As to the facts—the gentlemen say they are very recently imported from Africa; going on the ground that they have been introduced into Cuba in violation of the Spanish law. Now, I confess the evidence is exceedingly feeble. I must say it does not prove the fact that they have been recently imported. They have brought forward an affidavit that, in the opinion of a certain individual, they are not above a certain age. Another has been examined, who claims to be an African, and that individual has stated that, some time in April last, they were taken from the coast of Africa, and brought into Cuba. He goes on and makes a further statement, what course was pursued after he came to Cuba. They were put in a house, where

they were kept some time, and then put on board the Amistad, in the dead of the night, and carried away. But we have the testimony of another black boy, who has given a very different account, one that conflicts very much with this—he states that these persons were brought on board at 8 o'clock in the evening. Now, at that time, this boy says it was light—that they were not confined to the hold, but entirely loose, free from chains. What then took place? The affidavit represents them as having gone away that night—Antonio says they were brought on board at 8 o'clock in the evening unconfined, and remained till four o'clock the next day, and sailed out amidst the British cruizers. The account of this black boy is entirely different from the affidavit. Again,—that they were unable to speak the Spanish language, is not strange. They have a large number of slaves on a plantation—a small colony—they are put on a plantation and remain there for years, entirely ignorant of all language except their own, which is continued by the mother to the children. This is the case with a great portion of the younger part of slaves in the Island of Cuba. Nor does it appear, from any evidence before the Court, that they were not imported from some other island.

And the claimants themselves, under oath, state that they are the owners of this property. And, it is certainly a matter of very great personal interest to the one who appears here, because to a very great extent his property is concerned in the issue. We are entitled, at least, to have them retained till government can make some disposition of them.

Mr. Staples. In what I have to say in reply, I shall be as brief as possible; and endeavor not to repeat any thing that has been said. In the first place, I shall reply to the application and remarks of the District Attorney. He founds his application entirely upon the law he has read. A little attention to the provisions of that law, will show that it is inapplicable to this case. It provides that the President may, when he may deem it expedient, cause any armed vessel to cruize, where he may have cause to apprehend any attempt to carry on the slave trade, in contravention of the acts of Congress; and to instruct and direct the commanders of all armed vessels of the United States, to seize and take any of United States' vessels engaged in this trade. This law is not sufficient to authorize armed vessels of the United States to cruize for slavers. They must be instructed, commissioned, authorized. Commodore Hull would be thought very much out of the way to be cruising for slavers, in the 74 which he commands. There must be authority from the President; and they have no right to touch one, unless so authorized. And there is no evidence that Lieutenant Gedney had any such authority. But the evidence is the other way. He was employed in surveying our coast. And, it now appears from the record of the Court they did not take it under this law; but they took it as property in that situation, that they demand a reward for saving it from destruction. Can the District Attorney avail himself of their act, and say they took it under this law, when they say they did not? He must show that this was an armed public vessel, commissioned to do this service.

But let us examine some other sections of the law. The vessel is forfeited, and the authority of the President only can interfere, where vessels have violated the laws of the United States; and this gives him authority. But, it is as far from the spirit as the letter of that law, to authorize any armed vessel of the United States, without the authority of the President, to interfere.

But further—look at the requirements of that law—the commander of the vessel who takes a slaver is directed to *deliver every person on board* into the custody of the Marshal of the District. What has been done here? The very foundation for interference fails. Lieutenant Gedney brought this vessel in, and prayed the libel. The Marshal takes possession of these negroes under the construction he gave to that warrant. This law requires him to place these in the hands of the Marshal, and to write a description of them, and forward to the President. Again, he is required to take *all persons on board.* Where's Pedro Montez? Where's Ruiz? If the District Attorney has the least reason to apprehend that this is an American vessel, he has something more to do in the matter. Have you done all this? Here you are, sleeping in the same city with Pedro Montez, and you suspect him of being guilty of piracy; and yet, you suffer him to run at large. And this Lieuten-

ant Gedney, full of zeal for the suppression of the slave trade, and not take Pedro Montez and Ruiz! But he states that these persons claimed his protection, to save them from being drowned, that they might be hanged! And yet it is brought forward by the District Attorney as a reason for detaining these persons in custody, that it may turn out that this is an American slaver!

What has come out here in evidence? Why, that this is a Spanish vessel, with Spanish papers, employed in the Spanish coasting trade. Now, does the District Attorney really and seriously believe that it will some how or other turn out that this is an American vessel, engaged in importing slaves into the United States in violation of our laws againt the slave trade? The idea is ridiculous.

But further, this act provides that a bounty of twenty dollars a head shall be given for each negro so taken on board a slaver. Now, here is a much better bounty, if he is entitled to it, than he can get by libelling these negroes as property. But, Lieutenant Gedney would laugh at this.

Now, to say that after all, these men are to be held here, because the District Attorney suspects this to be an American vessel, is supremely ridiculous. If men are to be deprived of liberty from such vague suspicions as these, then we have far less security than I had supposed.

But the very draft of the libel shows that this was entirely an after thought, growing out of the exigency of the case: "But if it should appear that these persons have been brought here in violation of the laws of the United States," &c.

But, it is said, "What is to become of these Africans?" This Court is not the guardian of them. All this Court have to say is, "If you have any claims, we'll adjust them." The Court need not be under any apprehension, on this point. The humanity and wisdom of this State has provided for them. The business of the Court is confined to much stricter duties than administering alms.

With regard to the last testimony, as to the facts, I don't mean to repeat, what I have already said. We have introduced since that, a deposition, which the gentleman have undertaken to controvert. What are the main facts? That the children were born in Africa, and remained there, till a short time since, when they were seized and put on board a slaver and carried into Havana. Is that contradicted? Does that boy contradict it? No. Who is that boy? A poor miserable slave that belonged to the master of the vessel which brought these persons here. Is that the source we are to look to for the truth? If he is not to be regarded at all, that don't affect the matter; but if he is to be regarded at all, he says they had just come from Africa—had been two or three weeks there. He says they knew no Spanish; and he must have known, for he knows that language. So far, then, from contradicting our testimony, the boy supports it. But they say this boy contradicts the affidavit of Bahoo. But take the boy's testimony as translated by Lieutenant Meade. The boy says they embarked about 8 o'clock in the evening. What does the other say? Why, that they went on board in the night. But why did they not go out? They might have been under some apprehension from the British cruisers. Then he says they went out about 4 o'clock, he does not say whether it was four in the morning or afternoon. Now, does this, in any important particular, contradict the affidavit of Bahoo? But he says they did not attempt to avoid the cruisers. He told me the other day, that they were afraid of the British cruisers, and that was the reason they did not go out immediately. This is all there is to contradict, and it seems to me it goes to corroborate the affidavit of Bahoo. Add to this what was testified before and then add what the boy says, and it seems to me conclusive.

My learned friend was very ingenious in his method of disposing of the argument from the language of these children. It may be that there are so many of these come there, and they are so separated from the population of the Islands, that they have a Colony of slaves—a *Mandingo Colony!* I dare say that argument, before one of their Courts at Havana, would have great weight. But, with this honorable Court, it will go for what it is worth. It is against the facts and probabilities. Here is a boy, the first time he "found himself," very young, speaking Spanish. That shows that those that are born there, begin very early to speak the Spanish language.

I have been a little surprised that Mons. Ruiz, who is capable of speaking the Eng-

lish language, has not appeared here as a witness. I believe he could tell us. He is here, and there has been no evidence from him. Now, that they did not know that these people had just been brought into Havana, they will not dare, under oath, to declare. They did not venture to do so, in their libel. Their very language betrays it. Here is the very description of evidence which is most decisive—the dialect which is spoken nowhere else but on the coast of Africa. And yet I am told that Ruiz will come here and swear that he did not know that they came from Africa. I have a better opinion of him. Let him come here and encounter the perils of perjury, if he dare. They will not here impose on us. In Havana, they might easily find a court that would not see through the flimsy veil.

On the case of the Antelope, I did not remark, when up before. It was the case of a vessel built at Baltimore, which went out, and under the pretence of cruising, went to taking slaves, for the purpose of bringing them in and selling them. They were taken and brought in for violating our law; and proceedings were taken then, and the great question was settled, whether a person going out and taking a commission from another government, would save him from our laws. Our cruisers saw the veil, and said they could strip it off, and they did; and that was brought in and disposed of under our law.

The great argument of my learned friend was this: that here, by the Spanish treaty, we are obliged to deliver up the property. Well, I admit, if property is identified and proved by its owners, we are to deliver it up. But are these Spanish subjects to come in here and claim every thing and any thing as Spanish property? Put a case: Suppose this same vessel had come from the coast of Africa; being a Spanish vessel, forced in by stress of weather—should we be bound to deliver up the vessel, and allow them to take away that cargo? That brig, (La Facora) it is said, brought in about 500 Africans. But should we be obliged to deliver them up as property? My learned friend's argument proves just as much in that case as this? If that is so, it goes very far towards disposing of this case. But in that case, we should not be bound to deliver up. Why not? Because they could not be slaves. Spain has entered into a treaty with Great Britain to put a stop to the slave trade. But, we should be just as much bound to deliver that up, as this coaster.

But suppose another thing—for the safe-keeping of their slaves, they have put them on shore, and put them in prison; and they say they are free-born; and the Spaniards say it is true; but they have the treaty of '95, requiring us to deliver up all property. The gentlemen are at fault *in limine*. What is property? Can there be property of this description imported, after 1817?

But, it is said these negroes are in fault, because not armed with an authenticated copy of this royal decree? It is a happy circumstance that these girls are young—they may outlive it. This court knows with what success the courts of New York have attempted to get access to the archives of Spain. We are then to go to Madrid and get the decree, and prove that they are born free! If this is the state of the law, it is a most awful and ridiculous state of the law—it is mockery. Those that set up the claim that these people are slaves, and their property, must prove it. That man may obtain property in man is admitted, to the reproach of human nature. But my friend says it is the common law of Spain to hold slaves. I deny it. This decree declares that the common law was that all were free; but, by certain edicts, slaves were admitted into certain places. Is this the claim put in here, that, by the laws of Havana he was entitled to these slaves? No; he says he bought them, and then declares that slavery is there tolerated.

In reply to the authority quoted by the learned gentleman, I quote the case of the Eugene, 2d of Mason. Judge Story remarks, If a foreign claimant of a vessel seized for the slave trade, claims them as American property, he must give affirmative evidence. Property cannot be withdrawn from court, without proving the right of possession. The African slave trade is abolished, as against the law of nations; and any claim under it must be repelled.

It is therefore well affirmed that it is with the gentlemen to make the proof. It is to be presumed that every man is born free. What did Spain do at the Congress of Vienna? They agreed to acquiesce, and use their endeavors to suppress the slave trade. What have they done? They have issued their decrees to carry it into effect. Now,

can it be claimed under the Spanish treaty that they can make us parties to this trade?

The counsel says "We took this property, and brought it into the state of Connecticut; and now, if this Court says they have no jurisdiction, what shall we do?" Why, do as any other person would do in similar circumstances. The Courts of common law are open. The court looks no further than the case before them. It gives them no right to come here, if the property has been wrongfully brought here. Suppose Montez had said to Gedney, "I wish you not to take this vessel into a free port." Suppose Lt. Gedney had gone to Charleston; and there the case is dismissed for want of jurisdiction; and then Montez should say, "I had no hand in coming here." If Gedney has brought this property into a place where there is no jurisdiction, and Montez has lost it, the common law is open. There is no country where the real rights of man to property are better guarded than here. I have no doubt, if Pedro Montez wants to try it, he can have the opportunity.

Suppose, as has been remarked, he had brought forty-two horses or mules, and landed them, and they had broke from their pen and escaped, and got into the county jail-yard—how would the learned counsel find a way to return them at all? I doubt very much whether he would come into the court of Admiralty with them. But, that this court of Admiralty should be converted into a court for seizing runaway slaves, and restoring them to foreign claimants, is more degrading to their dignity than to be employed in catching runaway horses and mules.

Saturday, September 21st, A. M.

Immediately after the opening of the Circuit Circuit Court this morning, Judge Thompson said the Court were not prepared, as yet, to dispose of the case under consideration *finally*, and that any intimations he might then throw out, ought not to be taken as the ultimate view of the Court. He said the case was one not free from great difficulties, and the Court were embarrassed with the right disposition of it. The three girls, and all the prisoners, had been discharged altogether from any criminal accusation. It now becomes a serious question what disposition shall be made of them:—with the others, as well as the children who had been brought before the Court on the writ of *habeas corpus;* for the embarrassment felt by the Court extends to all the persons in custody.

The first question for the court to determine, is its power on this process; for the merits of the whole case, in its extended view, cannot now be considered. Are these persons rightfully detained in the District Court? That is the question for consideration. If they are rightfully detained, we should take it for granted that the Circuit Court have no right, by summary process, to take them out of the possession of a District Court, for that court can only interfere when the prisoners are detained by the District Court without any authority of law. Besides, great injustice might be done to the parties if the Court should decide, in a summary way, provided the District Court can rightfully detain them. If the decision of the District Court should be unsatisfactory to either party, there is the right of appeal to the Circuit Court, and afterwards to the Supreme Court of the United States. In the judgment of the Court, therefore, the case is presented simply with regard to the jurisdiction of the District Court. However abhorrent it may be to keep these persons in prison, or to view them in the light of property, and however desirous the Court might be that they should all be set at liberty, they must not permit their private feelings to govern them in deciding upon the case before them. They must discharge the duty of a court of justice, however painful it might be.

It has been argued by the counsel for the prisoners, that no court of justice can entertain the question of the right of property in human beings. But slavery, or the right of controlling the freedom of a certain class of men, is not only sanctioned by foreign powers, with whom we have treaties, but is recognised by the Supreme Court of our own country. He referred to the case of the Antelope. In that case the Supreme Court did entertain the inquiry as to the right of property in human flesh. That was a question, in many respects precisely like the present one. If the Court then supposed that they could not go into that inquiry, the case would have been otherwise decided. The Court were equally divided, and the decision therefore was, as in all cases of the kind, that the deci-

sion of the court below was affirmed. But the Court did go into the inquiry whether it was lawful to hold human beings in slavery, and the question was entertained upon whom the onus of proving the right of property devolved. The Court put the matter upon the ground that the right of property should be shown. However unpleasant it may be, in a moral point of view, it will not do for the Court to say they will not hear the question discussed whether there is a right of property in these prisoners or not.

The Supreme Court of the United States, in the case referred to, said the Africans were rightfully in the jurisdiction of the Court. This Court has the power of deciding who has the right to this species of property. He used, he said, merely the language of the law. The only inquiry then is, whether this property is rightfully in possession of the District Court. If it comes fairly within the admiralty jurisdiction of that court, whatever my views may be as to the ultimate decision of the case, it must not be disposed of summarily. The question is not now open, whether these Spaniards can properly be here, when the laws of their own country are against the slave trade, and when Spain has made treaties, and passed edicts, for its suppression. That question must arise upon its merits. The only question now is, whether this property, to adopt the language of the law, is within the rightful control of the District Court. We are of opinion that the prisoners cannot be taken out of the jurisdiction of the District Court on the writ of habeas corpus. The Court therefore request the counsel to furnish them with another argument as to the main question, *whether the District Court has jurisdiction in the case.*

We propose, said Judge Thompson, that the cause be kept open until afternoon, then to be argued, should the counsel for both parties agree to do so. If they cannot be prepared so soon, the Court must wait until they have sufficient time.

Some conversation then took place between the counsel on each side, and with the Court.

Mr. Ingersoll suggested that it might be best for the counsel on each side to furnish the Court with a brief, for the Court to give an opinion, at some future day, at an adjournment of the Court. Mr. Staples said the counsel would confer together, and would be prepared, at the opening of the court in the afternoon, to say whether they could accede to the proposition, or proceed to argue the cause to-day.

A writ of habeas corpus was taken out in the course of the forenoon, on the petition of Erastus Smith, Esq., of this city, for all the other African prisoners, returnable before this Court. The court then took a recess till 2 o'clock.

Saturday, September 21st, P. M.

After the court opened Judge Thompson asked the counsel on both sides if they had come to any agreement with respect to furnishing briefs, so that he could take them home with him, and write an opinion at his leisure. Mr. Ingersoll, of counsel for the libellants, said that they had not—that they differed in opinion—which he regretted, as he thought that justice to all parties required that sufficient time should be given to enable counsel to collect the best authorities. He said that so far as the counsel for the libellants had examined the subject they had come to the conclusion that they could not do justice to the case if pressed on to an argument this day. They wished that the judge should take the briefs and authorities, and at the adjournment of the term decide.

Mr. Baldwin, in reply, said he supposed that in a case of jurisdiction, where the personal rights of a party are concerned, those who maintain the jurisdiction should come prepared to argue the case. A question that affects so deeply the rights of the prisoners, and that may affect them still more, if other measures are adopted, demands prompt investigation. It is inconvenient to the counsel on the part of the prisoners to proceed now to argue the case, and equally so to prepare a brief, as other courts are soon to be held; but they deem it their duty to press this question for immediate decision.

Mr. Staples, for the respondents, said it would be a great personal convenience to him if he could leave the court, and leave it to the judge to decide during the vacation. But, being here, and knowing that forty human beings are incarcerated, as he believed unjustly, he deemed it his duty to forego personal considerations, and do all he could for their relief.

Judge THOMPSON remarked that if the

counsel for the prisoners insist he must proceed. He had hoped that more time would have been allowed him to examine the case, as he could not think of deciding a case of this importance upon superficial investigation; but as the counsel for the prisoners thought it their duty not to delay the matter, and as the question involves the liberty of persons now in confinement, we must go on, and take sufficient time at the present term.

[The Court, at an early part of the discussion, announced that a writ of habeas corpus had been granted in behalf of all the other prisoners—and therefore all of them were intended in the present argument.]

Mr. Baldwin, at the commencement of his argument, said *the only question was, in his apprehension, whether the District Court, under any of the proceedings in the case, have jurisdiction of these persons who apply for relief under the Act of habeas corpus.* The Judge observed that was the simple question, and he hoped the counsel on both sides would bear it in mind.

Mr. Baldwin said, these persons were brought into the District Court in the first place on the claim of Lieut. Gedney for salvage. They were taken near Culloden Point, at the east end of Long Island. He then stated the substance of the libel, and said, the first question then, as to the original right of jurisdiction, will depend upon the fact whether these prisoners were taken under such circumstances that the District Court had a right to hold them as property. The case of the Antelope, that had been alluded to, was a very different one from this. The persons there came in differently. The question of jurisdiction there turned on a statement of facts that were inapplicable to the case now before the Court. In the case referred to, the persons were first found on board a Spanish slaver—they were in the actual condition of slaves—were slaves *de facto* —they were captured from slave vessels—and were captured under such circumstances that, in the judgment of the Supreme Court of the United States, they could not be holden, but must be restored to the state in which they were when captured. They were seized under a belief that they intended to violate the laws of the United States with reference to the slave trade. This gave jurisdiction *prima facie* over the slaves. The question was whether it was a lawful capture. A majority of the court held that as the Spanish vessel sailed for Havana, carrying regular papers, and had the slaves on board as property, it was the duty of the Court to restore what was *prima facie* property. They were for restoring things to the condition they were in when the first unlawful act took place. But what are the facts in this case? These prisoners were not in the condition of slaves. They were *prima facie* free when first found, and they must be treated as persons. They were in the possession of the rights that the God of nature gave them. Those who apply for them as property should be prepared to show that they are property. This is a preliminary fact. They must show that they are rightfully in the jurisdiction of the District Court, or this Court must order their liberation. Process was issued against the vessel and property, but not against the persons. They were apparently free, and the Court must have entertained this presumption when its warrant was issued. The persons were not included in it; and it is only by a construction put upon it by the Marshal, that they were seized as property and are illegally held. Mr. B. here cited 1 Dodson, p. 84, the case of the Amedie. The presumption also is that by the laws of every civilized country the slave-trade is a contraband trade. Judge Story made such a decision.

The traffic is one we denounce as piracy. Comity to Spain requires us to suppose that a trade denounced by our laws as piracy cannot be lawful by her. Whatever may have been the practice of Spain in former times we are bound now to suppose that that nation looks upon the trade as infamous. No court then had *prima facie* evidence that they had jurisdiction over these Africans as property. Again:—they were on shore. A court of admiralty, sitting as an instance court, has no jurisdiction of property found on shore, although as a prize court they might under some circumstances. Mr. B. here cited Hall's Admiralty, p. 8—Kent, vol. I. p. 336, first edition, part 2d, sec. 17. It did not appear that these persons were not on shore at the time of seizure. Gedney says in his libel they were, and that the capture was more easy on that account.

With reference to the matter before the

Court, if any court of admiralty could have jurisdiction it was the District Court for the Southern District of New York. Whatever reasons Lieut. Gedney had for seizing the vessel, if the seizure was made within the limits of the New York District, all the proceedings, whether civil or criminal, must be had in that jurisdiction. He referred to Paine's U. S. Circuit Court Rep. vol. I. p. 40, and to Wheaton, vol. IX. p. 402.

The *seizure* is, when the property first comes into the custody of the officer who takes possession, which is to be brought into that District where it is first found. Were it otherwise it would lead to monstrous injustice. It was never intended that the party should select the District where he could proceed with the best chance of success. Mr. Baldwin then commented upon all the processes up to the date of the habeas corpus, and asked what else is there? Don Pedro Montez and Don Ruiz, these Spanish *gentlemen*, come into a Special District Court on the 18th September, and file a libel against certain property of theirs, as they choose to call it, being on land, in the city of Hartford, for the purpose of proceeding against it before the admiralty judge. They bought these persons, they allege, as slaves, not on the high seas, but in Cuba, and pray that their property may be taken possession of. What unheard-of claim is this! It is their duty to prosecute their claim, not in the admiralty, but in the common law courts of the State of Connecticut, where there is the right of trial by jury.

What other process is there? Why, apprehensive that the District Court could not hold these persons alleged to be Spanish property, the United States Attorney files his libel. Where were the persons when the District Attorney filed his libel? Has the admiralty court any thing to do where property is found on land? He referred to Wheaton, vol. 8, p. 391, the case of the Sarah. The proper course of proceeding, said Mr. B., when property is seized on land, is not by libel, but by information. It is not alleged, in this case, by the United States Attorney, that any offence has been committed. Neither does he claim that these Africans be tried, but only that they be given up on the claim of the Spanish minister. Are men to be picked up in this manner, he would ask, at the instance of a foreign minister? He was not aware that such power is vested, by our laws, in any man. The people of this country have not entrusted such power to any individual, not even to any officers of the United States.

But what further has the District Attorney to say? The President of the United States has power, he alleges, to take these prisoners, and send them out of the country. Where does he get the power to decide respecting the personal liberty of persons in the States? Mr. B. here referred to the celebrated letter of Mr. Madison to Mr. Erskine, and went on to say, the District Attorney, not feeling very sanguine in his first libel, suggests in the second, that if it should appear that these Africans have been illegally brought into the United States, the Court should keep them, in order that the President may send them back to Africa. These persons came into the State of Connecticut by wrong-doing, and they cannot be proceeded against by admiralty jurisdiction here. Suppose, said Mr. B. these Africans were horses, and some Spanish claimant should go to the judge of admiralty, and ask for process? Equally absurd is the present application of the District Attorney. With regard to the second proposition of the District Attorney, that "if it shall *hereafter* appear that they have been brought here unlawfully," —when is this to be determined? The proposition is not triable upon the face of it—it asks the detention of these persons for an indefinite period—and yet brings no charge against them, and indicates no period to their detention, and no form by which they are hereafter to be set at liberty. We claim, then, these subsequent proceedings—including the libels of Signors Montez and Ruiz, as well as the libel of the District Attorney, to be of no effect; that these persons have unlawfully been brought into the State of Connecticut—that they are entitled to its protection and cannot be taken out of its limits; and being unlawfully held in custody, ought now to be set at liberty. They will then be taken care of by the authorities of the State of Connecticut.

Mr. HUNGERFORD, for the claimants, said that the question whether these persons are to be considered as property, is one for the District Court to decide. He cited

Ingersoll's Abridgment, 9th Section, I. 845 to show that the District Court has jurisdiction, and proceeded to show the various subjects over which that court can exercise jurisdiction. He then went into an examination of the authorities cited by Mr. Baldwin, and endeavored to show their irrelevancy to the case under consideration. He said if either of the libels brought the case within the jurisdiction of the District Court, the writ of habeas corpus must be dismissed. In the matter of the landing of part of these persons, and their being found on land by Lieut. Gedney, Mr. H. read from Dunlap's Reports, p. 45. On the subject of Admiralty Jurisdiction, see Comy's Digest, vol. 1, p. 299—280, F. 6 and 9. Here, said Mr. H., are the principles recognised in this country on this subject. See also 1 Kent, 1st edition, p. 353, in relation to the same subject. The placing of property on land, by persons piratically in possession of it, cannot take it out of the jurisdiction of an Admiralty Court. Mr. H. also read 3 Saunders, Radley *et. al.* vs. Egglesfield *et. al.* The taking and robbing upon the sea is the original foundation of an Admiralty suit, and no subsequent act of the parties can remove it from that jurisdiction. Here are persons, as we say, who have wrongfully taken possession of this vessel, if not piratically, at least, they are great trespassers. Whether it be morally wrong, has nothing to do with the case.

The wrong—high-handed, if not piratical, in this case—was done upon the sea, and the subsequent landing of a part of these slaves on Long Island, or any where else, does not take the case out of the Admiralty Court.

If these persons or this property have been brought into New London and landed, it must be libelled there, for it cannot be taken any where else ; and the gentlemen claim that the moment the vessel has struck land the case is out of the reach of the Admiralty, and must be tried and determined by the common law courts.

The gentleman asks with an air of triumph, how long these persons are to be held under the libel of the District Attorney to await the decision of the President, —how long must they be kept to learn if they are Africans unlawfully brought into this country and liable to be sent back to their native land ? We can refer him in this matter to the case of the Antelope, where the District Attorney did precisely as has been done in this case—and we answer as in that case, *a reasonable time*—till the several questions involved have been duly and carefully examined, and an equitable and just decision can be had. Mr. H. said he would not undertake to say what shall be done—whether the President of the U. S. can retain the prisoners for the purpose of being delivered to the Spanish Government or sent back to Africa. The claimants think they ought to be delivered to them. In Mr. H's. mind, however, there was no difficulty in the way of the Court's holding the prisoners to await the order of the President. That was the decision in the case of the Antelope.

Mr. INGERSOLL, on the same side, said they were not now enbarrassed with the question, whether these persons were property or not. The Court has decided that under these libels, the question as to property may be made. The case stands then, as if it had been decided that the Africans were property. But the gentlemen meet us, said he, on the ground of jurisdiction. The cases cited by the counsel on the other side are not applicable to this case, for they refer to seizures for violating the laws of the U. S. and not for offences committed on the high seas, or a case where a vessel is libelled for a meritorious service for rescuing her and her cargo from peril, for which service and rescue Lieut. G. claims she shall be holden to pay salvage. That these persons are, or at least may be "property," I consider to be established by the opinion of the Court given this morning, and it is also settled, as I conceive, that these persons may have been a part of the cargo of that vessel. Suppose that Lieut. G. had taken a different course and libelled the vessel for a breach of the laws of the U. S. relative to the slave trade, the cases cited by Mr. B. might then have a stronger application ; but here, the vessel, or her cargo at least, was in peril—she was brought into what the libellant might have supposed the nearest or at least the most convenient place of safety—and here he libels her to recover compensation for the services he has rendered. And the statute law of the United States must set this matter at rest. (Ingersoll's Abridgment, p. 84, 85.) The jurisdiction does not depend, as has been

contended, upon the spot where the property may have been seized. *The libel for meritorious services rendered in saving property.* Mr. I. here cited the decision of the late learned District Judge, Bristol, of Connecticut, where property was taken on or near Fisher's Island belonging to the State of New York. That case is precisely like this in principle. The services were rendered in the waters of the State of New York, and the property was carried into another district.

Mr. I. also referred to the case of the Antelope, and said it ran—so to speak—on all fours with the case under consideration. Lieut. Gedney describes these persons as property. Mr. I. said he was not going into the proof at present—"Sufficient unto the day is the evil thereof." In the case of the Antelope, my learned friend says the blacks found on board her, were *prima facie* slaves. How so? The owners were in Spain or somewhere else, nobody knew where; but my learned friend triumphantly says the case is not applicable to this, because these were *prima facie* slaves; and more than this—he claims that the blacks found on board the Amistad, are *prima facie* freemen! Yet here are men who claim that they own them—and the boy, Antonio, declares under his oath that they are slaves—the papers of the vessel show this conclusively—and yet Mr. B. contends the case of the Antelope is not applicable because these men are *prima facie* freemen! But such a claim is not well founded—the case is applicable, and the opinions of the Court in that case make this so plain "that he who runs may read."

[Mr. I. read and commented at some length on the report of that case—4 Peters's Condensed Reports, pp. 31, 43.]

Again, in the matter of Gedney's libel—it is contended that the Marshal had no right to take these persons as property, even if they were property. Let us look at the libel. Here they are described as property—as having been found in danger of being totally "lost to the owners thereof"—this court has decided this morning that they may be property—and the warrant of the court directs the Marshal to take the vessel and the "personal property found on board of her, as described in said libel," into his custody; and as property they are now holden, and since libelled by the claimants thereof.

Being property, as stated in this libel, and in the libels of Montez and Ruiz, they were forcibly taken out of the possession of the owners; and this was confessedly done on the high seas. This is sufficient to give an Admirality Court jurisdiction in the premises; and though they or it may have afterwards got on shore, it was by no act of the claimants, and the fact cannot take the consideration and adjustment of their claim out of the hands of such court.

Mr. Hollabird, the U. S. Attorney, said he wished to present some views that had occurred to him since yesterday. The views he had presented have been sanctioned by the Supreme Court of the U. S. in the case of the Antelope, and in another case decided by the same tribunal. He said it had been stated that he had filed his claims imperfectly in point of form. Were this the case, he doubted not their honors would overlook the want of form, and assist him in carrying out the benevolent intentions of the enactment of 1819, relative to slaves unlawfully brought into the U. S. from Africa. I stand here, said Mr. H., to contend that these blacks are freemen—that they have been brought within the jurisdiction of the United States, and may be holden to abide the decision of the proper authority, and if found to be, as I suppose, native Africans, they may be sent to their native land.

I will now turn the attention of the Court to a case found reported in 3 Peters's Reports, p. 58. Here the libel alleged that the negroes were brought into the U. S. unlawfully, and the case was tried by the District Court of Louisiana, and the vessel and effects condemned to the U. S. The case was carried by appeal to the U. S. Court, and the decision there, Mr. H. read and commented on at some length.

Mr. Hollabird supposed the case of a vessel sailing from Havana under the same circumstances with the Amistad, and driven upon the coast by stress of weather, and shipwrecked; and he contended that in such case the U. S. would take them in custody and hold them till they could be disposed of in due form of law. And this was all that was contemplated by the Attorney, in the libel he had filed in behalf of the United States.

He referred to Story's U. S. Laws, vol. 3, p. 1752, and said that, without doubt,

these persons had been subject to the wicked traffic, (the slave trade,) and that he shall insist that they are free, and were wrongfully brought into this country. He then proceeded to cite cases in justification of his having filed a libel in behalf of the United States.

Mr. Staples, counsel for he prisoners, said the argument of the District Attorney reminded him of the saying, "save me from my friends, and I will take care of my enemies." In his remarks about his claiming the prisoners on behalf of the United States as free persons, he could hardly believe him to be serious. The Disrict Judge said yesterday, and very properly too, that this "property" cannot be taken and sold for salvage. Suppose there were no other property, what then? The Judge has said these Africans cannot be sold as property, yet it is contended that they are property, and that the District Court has jurisdiction over them as such. If they are property why cannot they be sold as such? Why cannot they have a slave market in the city of Hartford, and sell by auction these forty Africans! Why? because it is too revolting—because it would not be borne. The District Judge then, when he says they cannot be sold here as property, should, to be consistent, say he cannot touch this property. *This* Court does not say they are property. They only wish to know if the District Court has jurisdiction of the vessel and cargo. If they have not, all pretence that the District Court has jurisdiction falls to the ground.

In the case of the Antelope, it was never urged that the Court would set up the claim for any foreign potentate to hold slaves. Mr. Staples said he would be for fulfilling the Constitution, and the laws, and the treaties with foreign governments, but it must be shown that there is a treaty requiring us to restore Africans to slaveholders at Cuba when they have been purchased contrary to the laws of Spain. Let such a claim be set up by the President, Senate, or Spanish Minister, and let the Government of this nation avow that they will surrender these victims of oppression, and I, said Mr. Staples, will abandon such a country, and seek my fortunes in some British island. Corruption, said he, is, I know, stalking abroad in this land; doctrines are set up that are contrary to the principles of our government; and violence is threatened to those who contend for impartial liberty and the rights of man—but he did not believe that we were so far gone as to be slave-catchers for foreign claimants. When I shall see this Court, or the District Court, said Mr. S., solemnly decree that a person brought from Africa to this country, is a slave, then he would consider, whether he should not retire from courts where such decisions were made, sooner than he had intended. It is said, exclaimed Mr. S., that we must not speak out plainly on this subject, but he thanked God that he lived in a country where he had the right to speak his honest convictions, and that right he intended to maintain.

Mr. S. then commented on the case of the Antelope. The court did not, and could not, get at the merits of that case. There is no principle involved there that binds this Court to declare that these Africans are slaves. It has been said on the other side, that this Court has already decided, that it is within the cognizance of the District Court to declare them property. This Court has not so decided.

Has the District Court jurisdiction of these various libels? If they have not jurisdiction over the property first libelled, all the other libels, founded upon it, fall of course. If this case is within the jurisdiction of the Southern District of New York, it must go there. If the property is beyond the jurisdiction of this Court, all the libels fall. The proctor here thinks he can file in supplemental libels, but he cannot. If the principal libel fails, the incidental ones fail also. If Gedney's libel cannot stand for want of jurisdiction, nothing can be done here. In that case the Court of Admiralty here would be powerless. The question is simply this, Is this within the jurisdiction of New York or Connecticut? The powers of the District Court, in this country, were, he well knew, immense; they sweep the whole ground of admiralty. No other courts have such enormous power. But there is an appeal. That court has certain powers in exchequer, but it has no instance jurisdiction. We are now upon the question of admiralty jurisdiction. Where the property is seized there is jurisdiction. The term seizure has a broader meaning than the counsel on the other side contend. Whoever takes property, or

finds it, he must take it into the District where he finds it. Lieut. Gedney seized the property in the Southern District of New York. So clear is this fact established that the Amistad and cargo can never be condemned in this District. The place of seizure, or taking, was on Long Island. He then cited a case in the last edition of Gordon, pages 113 and 145. He also alluded to the libels for salvage down the Hook at New York and in Barnegat Bay. They are all proceeded against as contended for in this case. The gentleman, he said, had cited a decision of judge Bristol, the former District Judge of Connecticut; but that learned jurist never could have decided that property could be taken in one District and carried into another for adjudication. He here cited the case of the Brig Ann in 9th Cranch.

Where was the property seized? Unless this is settled there will be everlasting and iniquitous controversies about jurisdiction. Mr. S. proceeded to show why the Court in the district where the property happened to be taken should have jurisdiction. Suppose, said he, that Lieut. Gedney had been persuaded by these Spanish slaveholders to have taken the vessel to Pensacola, presuming it would be easier there to succeed in their libel than at the North. Would it not have been an outrage on all correct principles? The law does not intend to leave it to the choice of the person who makes the seizure, but declares that where the property is actually taken the jurisdiction commences. So Judge Livingston decided. Mr. S. here cited several cases. Last edition of Gordon, p. 145. Wheaton, 4th vol. p. 38, and Wheaton, 1st vol. p. 96.

Mr. S. said he did not consider it very important how many of the prisoners were on shore, or whether any of them were on shore, at the time of the seizure. It is settled, in all cases, that where property is taken, except it be prize, there proceedings must be had. In prize the *subject matter* gives jurisdiction—otherwise the taking of property gives jurisdiction. In this case the party has commenced in a mistake, and every step he has taken has been bad. Gedney's libel must fail as to property. Suppose, that instead of human beings these Africans had been mules, would the District Judge declare that although they were property they could not be sold as property? He would, in that case, not have made such a contradiction. He would not have said, they are property, and yet are not property. If Montez has, in fact, property in these Africans, the Court are wrong in saying they could not order them sold. The new libels are useless. If, under the libels, these claimants do not come and claim the property in admiralty, they come in to take it from the jurisdiction of the common law, into admiralty. If, then, Gedney's libel cannot be sustained the property is to go where the Court has jurisdiction. And going there, what can Montez do? With regard to the claim set up by the District Attorney for the United States, Mr. S. said he could not but be suspicious that the Spanish Minister had more influence with that officer in this matter, than the President of the United States himself. Mr. S. said that he had endeavored to confine himself as much as possible to the question of jurisdiction, and to the citation of authorities, more at large, than had been done previously. He concluded his argument at seven o'clock P. M. when, five hours having been consumed by the counsel on both sides, the court adjourned to Monday morning at 8 o'clock.

Monday, September 23.

On the opening of the Circuit Court, Monday, September 23d, Judge Thompson gave his decision with respect to the application of the prisoners' counsel, to have the Africans discharged under the writ of habeas corpus—and denied the motion. He said the question before the Court was simply as to the jurisdiction of the District Court over this subject matter. He regretted that the case had not been held up for further consideration, and that he had so little opportunity to examine the various important questions that are involved in it, with that thoroughness and deliberation that was desirable. He regretted this the more, as the case is a very peculiar and complicated one. It was one also difficult to be understood by the public. He could not be insensible to the fact, that the feelings of the community were deeply involved in the question, and he feared there might be misapprehensions of the real questions to be disposed of by the Court. It is possible, he said, that there may be some misrepresentation. He would therefore have pre-

ferred that time should have been allowed for him to give a written opinion. But the counsel having thought it advisable, he did not say it was not excusable, to call upon the Court to dispose of the case now, he was compelled, though much against his wishes, to dispose of it in the best way he could.

The question to be decided now is not as to the ultimate rights of either party, —but it is whether the District Court can take cognizance of the subject matter that grows out of this case. In order to ascertain this, we must recur to the laws of the United States. The case has been placed before the Court on the abstract right of holding human beings in bondage, or on the general question of slavery. The Court is not called upon here to determine this abstract question. It is sufficient to say that the Constitution of the United States, although the term slavery is not used, and the laws of the United States do recognize the right of one man to have the control of the labor of another man. The laws of the country are founded upon this principle. They recognize this kind of right. Whatever private motives the Court may have, or whatever may be their feelings, on this subject, they are not to be brought into view in deciding upon this question. They must give the same construction to the laws of the land, sitting in this State, as they would were they sitting in Virginia. It is the province and duty of the Court to determine what the laws are, and not what it might be desirable they should be. My feelings, said Judge Thompson, are personally as abhorrent to the system of slavery as those of any man here, but I must, on my oath, pronounce what the laws are on this subject. The true question then is as to the law, and not as to any of the questions involved in the case. The simple question to determine is as to the right of the District Court of Connecticut to take cognizance of the matter.

Under the laws of the United States all seizures in a District are to be taken notice of in that District where the seizure is made. The important question is always as to the place of seizure, and the question always turns upon that. If a seizure is made within the limits of a State, the jurisdiction of the District Court is local. If it is made on the high seas, any District Court may take cognizance of the matter. Where then, was the seizure made in this case? It seems to be agreed by the counsel on both sides that the seizure was actually made in the District of New York. If that be the case, this District Court has no jurisdiction of it whatever. But if the seizure was in fact made on the high seas, this District Court has jurisdiction. Judge T. said, he had supposed, at first, that the seizure was in fact made in the District of New York, but when he came to examine the matter, he found it was not so. Lieut. Gedney, in his libel, states no such thing. He says he was on a survey within the State of New York, but he does not say that he actually discovered the schooner Amistad within that District, and that he made the seizure within the District of New York. All the evidence before the Court, is what appears in the libel. The vessel, it seems, was taken off Montauk Point. The Grand Jury, in their statement, say it was a mile distant from the shore. If this be correct, it was a seizure upon the high seas, and therefore the matter is rightfully before the Court for this District.

In the absence of absolute certainty on this point, the Court can endeavor to ascertain, from the best evidence in their reach, by examining maps and charts, the locality of the place; and after making such an examination, they are of opinion that the actual place of seizure does not appear to be within the jurisdiction of the District Court of New York, but upon the high seas. Long Island in that part of it has no inlets, bays, rivulets, or harbors.— It was on the broad ocean.

The Admirality jurisdiction upon the the ocean extends to low water mark. Between high and low water mark, there is alternate jurisdiction between the admirality and common law courts. In deciding then that the seizure was made, in the judgment of the Court, upon the high seas,—if either party is dissatisfied, the Court can institute inquiry to ascertain the exact place, but the more regular course is, for the party dissatisfied to interpose a plea to the jurisdiction of the Court, and then the District Court must institute an inquiry to ascertain where the seizure was made. It is not competent then for this Court, at the present time, to

say the District Court has no jurisdiction in the case. Consequently this Court cannot now pass upon the question as to the property—that matter belongs to the District Court. Should either party be dissatisfied with the decision of that Court, an appeal can be taken to the Circuit Court and afterwards to the Supreme Court of the United States. Meantime the parties must be put to their pleas in the District Court, in order that all the facts, &., may be put upon record.

It has been said that this is a question of LIBERTY, and therefore, that this Court ought to decide the case in a summary and prompt manner. But, in the judgment of the Court, this ought to have no influence in the decision. The situation of the prisoners is such that they must be taken care of by somebody. They did not come here voluntarily. It is not the case, therefore, of persons coming here of their own accord, and being taken up by other persons against their will. If the District Court has jurisdiction of the schooner, they have jurisdiction of the persons of these Africans and they are bound to provide necessaries for them. They can provide for them as well as any other persons.—The case seems to have been argued on the part of the prisoners as if they ought to be discharged if the Court has no jurisdiction. This is not so. If it should be decided that the District Court here has no jurisdiction, they can decide also that the cause be transferred to the District Court of New York. The Court would, in that case, send the vessel and cargo, and every thing appertaining, to that Court. The prisoners would not be discharged, but sent also to the District Court of New York. No benefit would arise to them in being removed from this to another District. It is, therefore, a matter of no consequence to the prisoners whether the question is tried here or in the District of New York.

It has been said that the subsequent proceedings in filing these libels and claims here, were without authority, and ought to disregarded. But if the case is within the jurisdiction of the District Court, other libels could be filed. It is true that if original libels have been filed in order to bring the matter within the jurisdiction of this Court, the proceedings may be irregular. All parties might have filed their *claims* in regard to a subject already within the jurisdiction of the Court; and if they have filed libels as for an original seizure, it is only an *irregularity* which may be corrected by the District Court. They may allow the parties to file new libels or claims, if necessary. It is a subject already in possession of the law, and the Court is bound to receive and consider the claims and rights of all who may choose to present them. The rights are to be litigated *there*, not here, on the question of jurisdiction. If there is any irregularity it can be corrected by filing a new libel—the case being in the possession of the District Court, it is bound to receive claims of any body. This Court can not here say whether these Spaniards have any right to them or not, nor whether it is a case which comes within the act of Congress, authorizing the President to send back captured Africans to the land of their nativity. These questions cannot properly come up on a question of jurisdiction. They must come after, and upon a question of jurisdiction the Court must dispose of them. They will be decided on the hearing, upon the merits. The Courts of the United States have taken cognizance of cases analogous to this. The question of jurisdiction is a preliminary question, and the Court should not decide questions of abstract right. The Courts of the United States have taken cognizance of cases where foreigners claimed the persons of slaves. But this is the first instance where a writ of habeas corpus has been applied for. It has never been made a question whether they were instantly free on being brought into the United States. The case of the Antelope is directly in point. The Spanish and Portuguese consuls claimed these subjects as property—the Court said they must show their title. The burthen of proof rests on you. To this extent the Courts of the United States are bound to entertain jurisdiction. We do not decide, in disallowing the habeas corpus, that these parties are not entitled to their freedom, but only that it is in a regular way for decision, in another tribunal, from whose decision an appeal may be taken in this Court, and if desired, to the Supreme Court of the United States.

There may be an impression here, that because slavery is not tolerated in Connecticut, that the right of these Spaniards

should not be investigated. The Court however must be governed by the laws of the United States, and not by the laws of the State of Connecticut. Our form of Government recognized the right to import slaves up to the year 1808. It is true, the Constitution does not use that language; but it recognizes the right to a certain period, and declares until then it was a lawful importation. The Constitution also provides for the recovery of persons that may escape from one State into another where service is due. It goes even beyond this, and interdicts the States from passing laws that oppose claimants from taking fugitive persons in the free States. Should any State pass such laws, they would be absolutely void. We must look at things as they are. The Court feel bound therefore to say, that *there is no ground upon which they can entertain the motion under the writ of habeas corpus.*

We fear that some misapprehension exists in the public mind as to the effect and ground on which the case has been disposed of by the Grand Jury, under the directions of the Court. The question now disposed of has not been affected by what previously took place. The only matter settled previously was, that there had been no criminal offence cognizable by the courts of the United States. If the offence of murder has been committed on board a foreign vessel, with a foreign crew and with foreign papers, this is not an offence against the laws of the United States. It is an offence against the laws of the country to which the vessel belonged. The courts of the United States have in such cases no jurisdiction; but if the offence be against the laws of nations, this Court would have jurisdiction. A murder committed, as in the case of the captain of the Amistad, is not a crime against the laws of nations. Were the crime piracy even, it would not be a crime against the laws of nations, connected as it is with the slave trade.

The Court said, that as they perceived there were note-takers present, they hoped they would be careful to make a true representation of the decision. The Court does not undertake to decide that these persons have no right to their freedom, but leave that matter in litigation in the District Court, subject to appeal. And for reasons assigned, *deny this motion.*

One of the counsel for the prisoners then asked the Court if they meant to express the opinion, that a foreigner coming here with a slave, can call upon the United States' Courts to enforce the claim of the foreigner to the slave? Judge Thompson, in reply, said he did not wish to decide now upon the abstract question. As a Judge, he did not feel called upon to decide it. The Court was then adjourned *sine die.*

The District Court was opened. The Judge said he should direct that the United States' Attorney should repair to Montauk Point, in the revenue cutter, with a gentleman on the other side, to investigate the facts, ascertain where the seizure was actually made, &c.; that the Court would be adjourned, to meet in this city on the third Tuesday in November next; and that meantime it would be the duty of the Marshal to see that the prisoners were comfortably situated, provided with clothes suited to the season, that they had proper and sufficient food, medical attendance, &c.

The Court would, it is presumed, allow the prisoners to be discharged on giving bail; but as it must be on an *appraisement*, their counsel would not consent to it. The prisoners are remanded to the jail in New Haven.

It is perhaps well that the question has now assumed this form. That the claim of *such* property on *such* a basis, should be set forth distinct from all other considerations; yet in circumstances where its hideous bearing can be seen, is calculated to open the eyes of the people in the free States to the extent of their entanglements in the guilt and dangers of slavery.